United States Court of Appeals for the Second Circuit



APPENDIX

-107

In The

United States Court of Appeals

For The Second Circuit

NARCIZA LOPEZ,

rs.

Plaintiff - Appellee,

HENRY PHIPPS PLAZA SOUTH, INC.,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of New York

APPENDIX



WHITEHORN & DELMAN

Attorneys for Defendant - Appellant 355 Lexington Avenue New York, New York 10017 (212) 661 - 1166

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TABLE OF CONTENTS

	Page
Relevant Docket Entries	. 1
Order to Show Cause	. 3
Affidavit of Martin Atwood Hotvet	. 5
Letter of Lisa H. Blitman	. 8
Affidavit of Narciza Lopez	. 11
Lease	. 14
Letter of Defendant DateJ January 12, 1973	. 19
Decision of Hearing Officer	
Affidavit in Opposition of Joseph Delman	
Letter of Attorneys for Plaintiff Dated January 17, 1973	40.00
Letter of Defendant Dated February 1, 1973	. 42
Letter of Defendant Dated April 16, 1973	
Police Record Certification	
Police Incident Record Listings	
Police Arrest Records	
Criminal Court Complaint	
Final Judgment of Civil Court	
Reply Affidavit of Nancy E. LeBlanc	
Summons	
Complaint	
Answer	
Decision of District Court	
Order and Preliminary Injunction	. 84

	Page
Order to Show Cause to Extend Injunction	86
Affidavit of Nancy E. LeBlanc	
Affidavit of Jose Nazario	
Affidavit in Opposition of Joseph Delman	93
Memorandum of District Court	98
Order Extending Injunction	102
Notice of Appeal	104

RELEVANT DOCK . F ENTRIES

Civil Action No. 73CIV4009

Date	Entry
Sept. 19-73 Sept. 21-73	Filed Complaint, Issued Summons Filed pltff's affdvt. and temporary restraining order and order to show cause ret. 10-2-73 for an order.
Oct. 11-73	DUFFY, J. Filed order that deft., its agents, etc. are restrained and enjoined for 45 days from date of this order, taking any steps to evict pltf. and her three children as indicated; that this injunction shall not extend to or protect Thomas Lopez, Senior, the husband of the pltf; that this preliminary injunction shall automatically cease and lapse fifteen days from this date, as indicated; that no security shall be given by pltff, excepting that pltff shall make use and occupancy payments to
Oct. 17-73	deft. as aforesaid. GRIESA, J. Mailed Notice Filed summons that deft. is required to serve upon pltff's atty an answer to the complaint, etc. Clerk. Summons and return served: HENRY PHIPPS PLAZA SOUTH, INC. 10-10-73
Nov. 26-73	Filed order to show cause for extension of preliminary injunction. Retuble 11-29-73, in Rm 706 at 1:00 p.m. GRIESA, J.
Nov. 28-73 Dec. 3-73	Reassigned to Judge Griesa Mailed Notice Filed defts. affdvt, in opposition to pltffs, motion for continuance of interim preliminary
Dec. 3-73	injunction. Filed MEMO. On Oct. 4-73 I handed down a bench decision in this case holding that a prelininary injunction should issue. On Oct.9-73 I signed the injunction. * * * I hold that my injunction of Oct.73 should be amended to remove 45-day limit. The preliminary injunction should run to the final determination of this action. All other terms of the injunction will remain in effect.
Dec. 5-73	Settle order on notice, GRIESA, J. Filed transcript of record of proceedings dated October 2,4,1973 before Judge Griesa.

Date .

Entry

Jan. 9-74	Filed order that the preliminary injunction order of 10-9-73 shall remain in full force and effect, except insofar as said order
Jan. 7-74	limits the duration of the preliminary injunction to 45 days. Griesa, JMailed Notice. Filed deft's notice of appeal from order
	dated 1-4-74 - mailed copy to MFY Legal Services, Inc.
Jan. 15-74	Filed ANSWER of deft. to complaint.
Jan. 15-74 Jan. 15-74	Filed defts. affdvt. in opposition to prelim. injunction motion.
Jan. 15-74	Filed pltffs. reply affdvt. re motion for prelim. injunction.
Jan. 15-74	Filed defts. memorandum in opposition to motion

ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

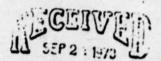
NARCISA LOPEZ

Plaintiff

-against-

HENRY PHIPPS PLAZA SOUTH, INC.

Defendant



CIVIL ACTION NO.

73 CIV 4009

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION

JUDGE CANNELLA

Upon the complaint herein and upon the affidavits attached hereto, it is

ORDERED that the defendant or its attorneys show cause at a motion term of this court to be held in Room 110 in the United States Courthouse, Foley Square, New York, New York, on the 200 day of September, 1973, at 100 30 A.M. or as soon thereafter as counsel may be heard, why plaintiifs herein should not be granted the following relief:

- 1. An order issuing a preliminary injunction pursuant to Rule 65(a) of the Pederal Rules of Civil Procedure enjoining defendant Henry Phipps Plaza South, Inc., and its agents, and all persons in active concert with it, from evicting or threatening to evict plaintiff from her apartment, Apt. 8J, 330 East 26th Street, New York, New York, and enjoining defendant from further prosecuting summary proceedings in state court initiated to effect plaintiff's eviction, until the issues raised by the within action are finally determined;
- An order pursuant to 28 U.S.C. \$1915 waiving the security requirement of Rule 65(c) of the Federal Rules of Civil Procedure;
- 3. For such other and further relief as to the court may seem just.

IT IS FURTHER ORDERED, pursuant to Rule 65 of the Pedexal Rules of Civil Procedure, that defendant Henry Phipps Plaza South, Inc., and its agents and all persons in active concert with them are temporarily enjoined panding the hearing

for a preliminary injunction from evicting or threatening to evict plaintiff from her apartment, Apt. 8J, 330 East 26th Street, New York, New York, and from further prosecuting summary proceedings in state court to effect plaintiff's eviction, on the grounds that plaintiff alleges that defendant's refusal to renew her lease in the circumstances herein has deprived her of due process of law and equal protection of the laws and unless the injunction requested is issued, she will be irreparably injured in that she will be evicted from her apartment by summary proceedings, she has no adequate remedy at law, and her cause of action-will be effectively mooted.

IT IS FURTHER ORDERED pursuant to 28 U.S.C. \$1915 that plaintiff is not required to post security as required by Rule 65(c) of the Federal Rules of Civil Procedure, on the grounds that plaintiff is a poor person, whose sole means of support is public assistance and who therefore is unable to post security or pay any other costs or fees herein.

IT IS FURTHER ORDERED that service of this order be made on the defendant Henry Phirps Plaza South, Inc., at its office at Two Penn Plaza, New York, New York on or before the 215 day of September, 1973, at or before service may be made by the attorneys for plaintiff.

At the United States Courthouse Foley Square New York, New York

on this 19th day of September, 1973.

UNITED STATES DISTRICT JUDGE

AFFIDAVIT OF MARTIN ATWOOD HOTVET

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

NARCISA LOPEZ

Plaintiff

CIVIL ACTION NO.

-against-

HENRY PHIPPS PLAZA SOUTH, INC.

APPIDAVIT

Defendant

STATE OF NEW YORK) COUNTY OF NEW YORK) ss.:

MARTIN ATWOOD HOTVET, being duly sworn, deposes and says:

- 1. I am an attorney admitted to practice in the United States District Court, Southern District, of counsel to MANCY E. LeBLANC, attorney for the plaintiff herein. As such I am fully conversant with the facts and circumstances of this matter.
- 2. I make this affidavit in support of plaintiff's request for a temporary restraining order and preliminary injunction enjoining defendant, HENRY PHIPPS PLAZA SOUTH, INC., from evicting or threatening to evict plaintiff from her apartment, Apt. 8J, 330 East 26th Street, New York, New York and enjoining defendant from further prosecuting summary proceedings in state court initiated to effect plaintiff's eviction, until the issues raised by the within action are finally determined.
- 3. Defendant Henry Phipps Plaza South, Inc., owns and operates the project known as Henry Phipps Plaza South, in which plaintiff lives. Defendant is a corporation organized pursuant to the Redevelopment Companies Law (Article V of the Private Housing Finance Law) and is financed under \$221(a)(3) and \$236 of the National Housing Act, 12 U.S.C. \$1701 et seq. The Company was incorporated to build and operate a housing project in the Bellevue South Urban Renewal Area pursuant to the Urban Renewal Flan therefor. The Corporation acquired its land from the City of New York, pursuant to a lengthy agreement, recorded

with the deed, governing the construction and operation of the project. The Redevelopment Companies Law provides for extensive supervision by New York City's Housing and Development Administration of the organization, planning, development, maintenance and operation of defendant. Defendant's certificate of incorporation provides for such extensive control, as is more fully set forth in the complaint.

- 4. As is set forth in more detail in the complaint, plaintiff alleges and intends to prove that she has been denied her constitutional rights as guaranteed by the 14th Amendment, in that defendant refused to renew her lease and terminanted her tenancy without according her a hearing in conformity with constitutional standards:
- (a) the hearing officer was project manager for a project owned and operated by Phipps Houses, the parent company of defendant, and was therefore not impartial within the meaning of the due process clause. Moreover, in proof thereof, he made statements to plaintiff's attorney before the hearing indicating bias against plaintiff.
- (b) no regulations governing refusal to renew leases and the specific grounds therefor were made available to plaintiff before the hearing and no such regulations exist.
- (c) the decision was based upon evidence which would be insufficient under state law, if plaintiff's lease had not lapsed pursuant to an arbitrarily set term, to enable defendant to invoke the power of the state courts to evict plaintiff as "objectionable" and in breach of her lease.
- 5. Plaintiff brings on her request for a preliminary injunction by order to show cause because prompt judicial relief is essential to prevent the defendant from continuing to prosecute summary proceedings and evicting plaintiff.

 Summary proceedings against defendant have been begun and

plaintiff must appear in state court on September 20, 1973.

Under the law of New York, plaintiff has no defense to the summary proceedings, in that the only issue in the said proceeding will be whether the defendant terminated the plaintiff's lease and gave her proper notification. Under settled decisions, the plaintiff may not challenge the basis of the termination and raise the constitutional claims made herein.

- 6. Plaintiff will be irreparably injured if the injunctions requested are not issued, in that she will be evicted from her apartment before she can be heard on her constitutional claims. She has no adequate remedy at law and therefore will be left without any adequate remedy at all.
- 7. No bond or security should be required of plaintiff, because she is a recipient of public assistance and therefore unable to pay such security. Upon information and belief, 28 U.S.C. \$1915 exempts plaintiff from the security requirement of Rule 65(c) of the Federal Rules of Civil Procedure.
- 8. No application for the relief sought herein has been made previously in this or any other court.

WHEREFORE, plaintiff respectfully requests this court to issue a temporary restraining order and then a preliminary injunction enjoining defendant Henry Phipps Plaza South from evicting or threatening to evict plaintiff from her apartment, Apt. \$3, 330 East 26th Street, New York, New York, and from further prosecuting summary proceedings in state court to effect plaintiff's eviction from her apartment, until the issues raised by the within action are finally determined, together with such other and further relief as may be just in the premises.

Martin atwood Hotvet

Sworn to before me this 18th day of September, 1973

MOTARY PUBLIC Qualified in New York

Commission espire March 30, 3975

admitted to gractice in the state of Man york backy affirms the following to be true under genalty of perjung:

What she was of council to Many year shows Inc. from January 1971 until July 1973 and as such she regresented mo Marcisca Jogg at the Permination of Penancy bearing at Phigo Houses in abuse and March of 1973.

That do is unable to refer to appeared dates in this affirmation because she is making this affirmation outside of New york city and she does not have accept to the file and records of this

That guar to the commencement set the bearing, but after the garties and their attorney had taken their places in the hearing room, Mr. Codman stated to her that he thought the allegations against mo. Jugez and her family were sufficient to justify Phygos Houses terminating her That she objected to the hearing afficien publically stating this anchosion griar to the taking of any testimoney a wichence, and that she objected to this statement by Mr. Coolman as conduct which

9

and a gre-disposition on the gard of the hearing officer to rule in favor

Lisa N. Blitman

Dated: Agtender 1,1573

AFFIDAVIT OF NARCISA LOPEZ

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

NARCISA LOPEZ

Plaintiff

CIVIL ACTION NO.

-against-

HENRY PHIPPS PLAZA SOUTH, INC.

APPIDAVIT

Defendant

STATE OF NEW YORK) COUNTY OF NEW YORK) SS.

MARCISA LOPEZ, being duly sworn, deposes and says:

- I am the plaintiff herein and a resident of Apt. 8J, 330 East 26th Street, New York, New York, a building owned and operated by Henry Phipps Plaza South, inc.
- 2. I lived in the Bellevue South Urban Renewal Area on the site of my present building. I lived in a privately owned, rent-controlled building. In 1968, while the new building was being built, I was moved into temporary housing. When Henry Phipps Plaza South was completed and opened to tenants in July 1970, I moved into my present apartment, where I have resided ever since. I had a right to return, since I was a former site tenant. I signed a lease given me by the landlord. The lease is annexed hereto as Exhibit 1.
- 3. I live in my apartment with my daughter Naida, who is 19, my son Thomas, who is 17, and my son Jose, who is 15. My husband Thomas and I are separated, and he has not lived here for about 1 1/2 years.
- 4. On January 13, 1973 I received a letter, dated January 12, stating that my landlord, the defendant in this lawsuit, was not going to renew my lease, and stating many reasons. The letter is annexed as Exhibit 2.
- 5. I took the letter to MFY Legal Services, Inc.
 Ms. Lisa Blitman, an attorney there agreed to represent me. In
 June of this year, Nancy E. LeBlanc became my attorney.

- I attended two days of hearings, on February 27,
 and on March 6, where Ms. Blitman represented me.
- 7. On July 10, the decision in my case was made and the refusal to renew my lease was upheld. The decision after hearing is ennexed as Exhibit 3.
- 8. On July 16, I received a notice that my tenancy was terminated. On September 11 I received a notice and petition asking for a final judgment of eviction. I must appear in the Civil Court of the City of New York on September 20.
- 9. My attorney advises me that it is the law of New York that I may not raise any constitutional issues on September 20 in the Civil Court. The only substantive issue I may raise is whether the notice of termination was properly served.
- 10. If the Federal Court does not enjoin my landlord from proceeding with the Civil Court action and evicting me, my attorney advises me I will soon be evicted. I will lose my apartment without any opportunity to raise my constitutional claims. I will have no place to live.
- away from this area where I have lived for many years. My attorney advises me that I would never have been evicted from my old apartment, on the grounds which my landlord is now using to justify my eviction. Even if my old landlord had tried to evict me, I would have had a good defense that the conduct of my family was not substantially injuring other tenants in the building and that I should not be held responsible for the conduct of my husband, who does not live with me and from whom I am separated.
- 12. I am a recipient of public assistance. I have no assets other than furniture and clothing of negligible value.

 I am unable to pay any costs, fees, or security for this lawsuit which is brought by my lawyer, who is an employee of MFY Legal Services, Inc., a federally funded organization which provides free legal services to poor people.

13. The nature of my cause of action is as follows:
my landlord, the defendant, refused to renew my lease and will
evict me unless I am successful in this case. I have a constitutional right to due process and equal protection before I
lose my apartment. Defendant denied me these rights. I
believe I am entitled to redress.

MARCISA LOPEZ

Sworn to before me this

18th day of September 4: 1973 - 1973 - Work York

Hotary Public, State of New York No. 31-82-9713 Qualified in New York County Commission expires Murch 30, 1976

MOTARY PUBLIC

LEASE [DI] HENRY PHIPPS PLAZA SOUTH, INC. APARTMENT LEASE

Anrerment of Erase, made as of the 1st day of October seen HENRY PHIPPS PLAZA SOUTH, INC., (hereinafter referred to as "Landlord"), a redevelopment company, organized and existing der Article V of the Private Housing Finance Law of the State of New York (hereinafter referred to as the "Law"), having as its ad-

(bereinafter referred to as "Tenant"), residing at ...346 East 24th Street, New York, New York

Witnesarth:

WHEREAS, the Landlord is the Mortgagor on a mortgage covering the project in which the hereinafter described unit is situate, which mortgage is insured under Section 236 of the National Housing Act, as amended; and,

WHENEAS, the Mongagee on the aforementioned mortgage has entered into an interest reduction contract with the Secretary Housing and Urban Development, acting by and through the Federal Housing Commissioner, which provides that the Commisser will make interest reduction payments to the Mortgagee on behalf of the Landlord which payments will reduce the monthly pays due by the Landlord under the mortgage; and,

WHEREAS, pursuant to a Regulatory Agreement between the Landlord and the Secretary, the Landlord has established a basic schedule and a fair market rental schedule for each use in the project, which schedules have been approved by the Courdoner; and,

WHEREAS, the Landlord has determined that the Tenant is eligible to pay less than the fair market rental;

NOW THEREFORE, Landlord lesses to Tenant and Tenant hereby hires and takes from landlord the apartment known as apart-26th St..., Borough of Manhattan, City and State of New York (the building and the parking and recreational areas appurtenant reto being hereinafter sometimes referred to as the "Development") to be used and occupied as a strictly private dwelling apartment Tenant and such persons as are listed and approved on the apartment application submitted in connection with this lease, and not effective, for a term to commence on the LSE day of CEODER 19 0 or thirty days after notice is sent to Tenant at the above address stating that the demised premises are ready for occupancy, whichever is later (pro-..... or thirty days ? leated as bereinafter provided, at the annual rent of) Dollars, subject to adjustment as hereinafter provided plus any and all surcharges made in acdance with Tenant's family income, pursuant to the Law and Rules and Regulations of the Housing and Development Adminm of The City of New York (hereinafter referred to as the "HDA"), plus any and all rent increases granted by order of the HDA want to the Law and approved by the Federal Housing Commissioner (hereinafter referred to as the "Commissioner") pursuant the Regulatory Agreement beween the Landlord and the Commissioner (hereinafter referred to as the "Regulatory Agreement"), and this any all other charges under the terms of this lease, all of which are deemed to be additional rent hereunder. Tenant agrees to pay the sent and any and all additional rent in equal monthly installments in advance, promptly and without further notice or bills, on the first day of each month during said term, at the office of Landlord or such other place as Landlord may designate, withany sctoff or deduction whatsover, except the Tenant shall ray the arst full monthly installment on the execution hereof (unless e be a renewal). If the demised premises are rentectrons a day other than the first day of the mounts, the Lundlord may d a bill, in such a manner and under such circumstances as he alone may determine, requiring the Tenant to pay the rent for ch portion of the month in advance on the first day of any following month and that thereafter the rent shall become due and payte on the 1st day of each and every month in advance. With respect to any portion of a month occurring at the beginning or end of the term of this lease, Tenant shall pay rent pro-rated on the basis of the actual number of days in such month.

The parties hereto, for themselves, their heirs, distributees, executors, administrators, legal successors and assigns, hereby

2. Teams shall pay the rent and additional rent as above and hereinafter provided. The Landford specifically reserves to stell the right from time to time to the application to HDA for permission to increase the maximum average permissible rental per month per rental room, in accordance with a provisions of the arregment netween the City of New York and the adderd dated as of April 25, 1968, as the same may be amended, and it Tenant hereby concents thereto. Anothing herein contained to the control of the provision of the arregment with increase in such maximum average remissible rental, the Lenant hereunder shall be increased as of the effect of the control of the control

increased.

and agrees that the monthly rental payment is subject to adjustment Landlord to reflect income changes which are disclosed or any of the prepartications and Legant agrees to be bround by such adjust-leannt agrees that the monthly rental payment shall be 25% of the adjustment agrees that the monthly rental payment shall be 25% of the adjustment monthly income, except that the monthly fortil ball less than the loan monthly rental appeared by the commissioner and agrees to give thirty days written notice of any such adjustment. Tenant, by an addendum to be made a part of this least, nating bount of the adjusted monthly rental which the fenant will be retto pay. Landlord and Lenant agree that, it upon recertification, if Tenant's income to sufficient to pay har market rental, then 349.72 It's rental shall be increased to the fair market rental of S.

chers without the previous written consent of Landlord and the approval of the HDA. If this leave be assugned, or if the demised premises or any part thereof be underfete or excepted or anybody other than Lenant, Landlord may, after default by Tenant, evident rent from the assigned, under-tenant or occupant, and apply the ne. amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiser of this covenant, or the acceptance of the assigned under-tenant or occupant as a tenant, or a releave of Tenant interin the performance, by Tenant of covenant, or the acceptance of the assigned under-tenant or occupant as a tenant, or a releave of Tenant interin contained. Even though Landlord shall consent to, and the HIDA shall appove, an assignment hereot, no turther assignment shall be made without the express consent in writine of Landlord and the approval of the HDA. The character of the occupancy in the demised premises, as above expressed, is a special consideration and inducement for the rentine of this Vive by Landlord to Tenant, and in the event of solution by Tenant of the Assirtation acainst sublettine or assignment, or if premises are not in continuous, bona lide use as the principal residence of Tenant and personal instead and approved on the application submitted in connection with this lease, or if Tenant shall cape to occupant by unders us violate any under retrinction in connection herein improved, this leave may, at the option of Landlord, be terminated in the manner hereinalter provided. Paragraph 4 (centinued)

5. Throughout the term, Tenant shall take good care of the demined premises, its appurtenances, fixtures and equipment and shall sufter no waste or injury thereto; shall not deal into, distigure or deface any part of the

ient understands that adjustment pursuant to this paragraph are also jet to the remail terms stated above. Lenant agrees to pay to the Land-1 any rental which should have been paid but for (a). Lenant's mi-retentation in his initial missing certification or recentification, or in other information furnished to the Landbord, or (b). Lenant's failure upply income recentifications when required or to supply information uested by the Landbord.

2. Tenant shall not use the demixed premises or any part theread or suffer the same to be used for any purpose other than as a private disciline apartment, nor by any persons other han those listed and approved on the application submitted in connection ids this lease.

Representations
3. Tennant represents and warrants and certifies the by Tenant securacy of all statements made in the application submitted in connection with this leave and in any report of income or family composition and it shall be a default under this leave if any statement contained therein shall prove inaccurate at any time. Tenant shall notify! I analised of any channe in tainity income or family composition as it occurs and shall comely with all requests of Landlord or the Commissioner for intermation thereof, a breach of which obligation shall be deemed a default hereunder. Jenant arrest that a recentlication of income shall be made to the Landlord at least every two years from the date of this teave; prosition, inswever, that in any time the sevential his income upon the execution of any subscituent leave of the aforesaid premises. If at any time during the term hereof fenant shall be found incligible for occupancy by reason of excess income or otherwise, and Tenant is so notified by Landlord, then, and in that event, this leave shall thereupon cease and terminate and fenant shall vacate and surrender the demised premises within thirty (30) days from such notice, or, if continued possession is permitted upon payment of a rental surcharee. Tenant will pay such rental surcharre. The fenant acroes that the family norme, family composition and other cheristist requirements shall be deemed a violation of a substantial obligation of his tenancy.

Automobile.

4. Tenant and tenant's heirs, distributes, executors.

4. Tenant and tenant's heirs, distributees, executors, administrators, legal representatives, cuccessors, and aprigns, shall not sell, assign, transfer, mortgage or ensistent this lesse, or underlet the demised premises or any part thereof or permit the demised premises or any part thereof to be used by

demixed premises or the Development, or suffer same to be done Landlord may repair, at the expense of Tenant, all domare or money to the demixed premises or to the Development, or to its histories, apportendings or equipment, done by Tenant or Tenant's Landly, enests, servants, employees, agents, visitors or Inconses, or Caused by missing proported at Information in and/or out of the biolidine, or by installation or removal of Information in and/or out of the biolidine, or by installation or removal of Information or system, short circuits, overflow or leakage of water, strain, diminishment and or system, short circuits, overflow or leakage of water, strain, diminishment and pipes or plumbine works, or p. st. or from any other cause, this to carefections, neglicence, or improper conduct of Lentint or Tenant's fauntly, modif, servants, employees, acents, visitors or licensees. Tenant will not do or promit to be done any repairs, alterations, additions, improvements, panning, decorating or wall papering in or about the demixed premises without the written consent of Landlord. All such alterations, additions or improvements, and the cause of the state of the s

Requirements
of Laws
of Laws
of Laws
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of Laws
orders, regulations or requirements of the New
York Board of Fire Underwriters or other similar
body, and shall not do or permit to be done in or upon the demoved premities or bring or keep anything therein which will increase the rate of such
insurance. A schedule or make-up of the insurance rate issued by the New

Lease P.

Bragraph & (continued)

York Fire Insurance Exchange or any similar body shall conclusively establish the items and charges constituting the insurance rate from time to time applicable to the property of which the demised premises forms a port. Tenant, at its tole expense, shall comply with all laws, orders, directives, rules and reculations made at an introduced as increased or modern. both. Tenant, at its tole expense, shall comply with all laws, orders, directives, rules and reculations produced as a herealist amended or modified of any povernmental authority having introduction over the demised premises, with respect to the demised premises or the use or occupation thereof, and shall not do or permit to be done any act or thine upon the demised premises in volution thereof or which may subject Landhord to any llability or responsibility for injuries or damages to any person or persons or property or to any penalty or which will invalidate or be in conflict with any line or other insurance policies covering the property of which the demised premises forms a part. the demised premises forms a part.

Indemnity 7. Tenants shall indemnify Landlord against, save Landlord harmless from and reimburse Landlord for, any and all demanes, expenses tincluding counsel tees), lines and penalisa, injury or liability to any person or persons or property, occasioned wholly or in part by any act or omission of fenant, femants family, prests, servants, employees, acents, assens, substemants or ficensees or due o non-performance of or non-compliance with or breach of or failure to there any term, covenant or condition of this lease upon fenant's part is be kept, observed, performed or compiled with.

leef's

a. If Tenant shall default in the performance of any it to covenant on lenant's part to be performed hereuniter.

Landlord may, but shall not be oblicated to, perform same for the account of Tenant at any time thereafter, without notice to Tenant. Any sum of money expended by Landlord and any expenses incurred by Landlord and any expenses incurred by Landlord and any expenses incurred by Landlord standard to the paid by Jenant to Landlord on the first day of the la following such payments or expenditures.

See and Servants of the servan

without notice reenter the demised premises, either by summary proceedings or any other sontable action or proceeding or the force or otherwise bathout being hable to proceeding hor damages, and dispusses and formove benant and other occupants and their property and hold the demised Premises as if this lease had not been made, but berna shall remain hable as hereinafter provided. Lenant hereby expressly waives any right to a format or express demand for payment of tent and forther waives service of notice of intention to receive on of instituting lee at proceedings to that end and which may be required by any present or tuture law.

of mitice of inferior to receive of or instituting level proceedings to that end and which may be required by any present or future law.

Remedies of 12. In the event that the term of this leave shall terminate and expire pursuant to any such notice of at me result of summary proceedings, or other action or proceeding of the result of summary proceedings, or other action or proceeding of the demised premises in any other manner bettern provided, (a) Tenant shall pay to Landford any rent then due, tovether with all expenses of Landford, including connect fees and dispursements, insuffed in connection with any summary proceedings or other action or proceedings and the reminsal of the property and effects of Tenant or other occurring and the reminsal of the property and effects of Tenant or other occurring and redecorating the same for resental, (b) Landford may relet the demised premises and all expense insuffer in the name of Landford or otherwise for a term or terms which may at Landford so option be more or less than the period which would otherwise have constituted the balance of the term of this bear and may praint concessions or free rint; and (c) Tenant shall also pay to Landford as damages for the failure to observe and periorm. Tenant's concentral be that contained any deficiency between the rent berefer reversed or accept to observe and periorm. Tenant's concentral for the remainance of the term hereby originally demised from the date of such termination, reentry or repositioned and tenant's acceptance of the termination of a lease or leases for the demised premises for each month of such period after the deduction of concessions, free rent, prokens' commissions and expenses of Landford for repairing, redecorations in the demised premises as it considers advisorable and necessary for the purpose of releting same and the making of some allowing proceeding. Tradford shall not ovent be lable to fenant in any way what retends of the main and or decorations in the demised premises of Landford for repairing a

Waiver of 13. Tenant further waives any and all rights of reRedemption framed by or under any present or future favors in the event of Tenant being existed or disposiressed for any cause, or in the event I and/ord instanting powerson of the
demitted property by reason of the violation of any of the provisions of
this lease by Tenant or otherwise.

There is the property of the p

denied of the claim of Landlord, or of its insurer by subrogation, against the most damages.

Claim and SL (1) If Tenant shall default in the observance or particemence of any of the covenants, acreements or conditions to be kept, observed and performed by lended and shall have motified lenant of such distant and if Jenant shall have additions to receiply such default to the satisfaction of Landlord within a days offer the givene of such notice or, in case of any default not suspense to be being rectaled within said period, shall have tailed to compete to empletion with the utmost difference to the valufaction of sufferit or (2) if the default premises shall be used or o...payed for any again other than as a strictly private one-tamily dwelling apartment by that on the persons listed and approved on the application submitted exametion with the lease or in violation of the provisions of this lease;

(3) If Tenant shall file a violatizity period or all provisions of this lease;

(3) If Tenant shall like a violatizity period or a contract of the same of a property or parmanent receiver or trustee of Jenant's property agreement by any count; or (5) if 1-sun shall make a veneral asserted by any count; or (5) if 1-sun shall make a veneral asserted by any count; or (5) if 1-sun shall make a veneral asserted by any count; or (5) if 1-sun shall make a veneral asserted by any count; or (5) if 1-sun shall make a veneral asserted by any count; or (5) if 1-sun shall make a veneral asserted by any count; or (5) if 1-sun shall make a veneral asserted by any count; or (5) if 1-sun shall make a veneral asserted by any count; or (6) if 1 any execution or altachment of the benefit of creditors; or (6) if any or otherwise be transitioned by any count; or (5) if 1-sun shall make a veneral asserted by any count of the shall be taken or decept a co-tenant; or (7) if Jenant is interest in a large shall be taken or decept a co-tenant; or (7) if 1 cenant is lease to any other person except a co-tenant; or (7) if 1 cenant is lease to any

Helore Possesse

14. If Tenant shall, before the date above fixed for the commencement of the term beroid, default in the performance of any agreement by Jenant contained in any other lease or lettine by Landlord to Jenant in Landlord, this lease shall not go into effect, and

then, at the option of Landford, Tenant shall not be entitled to p

Tenant shall not be entitled to possession hereunder.

No 15. No act or thing done by Landlord or Landlord's agents during the term hereby demised shall constitute an eviction by Landlord, nor shall be deemed an accept such surrender of the demised premises, and no agreement to accept such surrender while be valid unless in writing wined by Landlord No employee of Landlord or of Landlord's agents shall have any power to accept the keys of the demised premises prior to the termination of the lease. The delivery of keys to any employee of Landlord or of Landlord's agents shall not operate as a termination of the lease or a surrender of the demised premises. The failure of Landlord to seek redress for violation of this lease, or any this lease, or any of the Rules and Regulations set forth world have originally constituted a violation, from having all the force and effect of an oriental violation. The receipt by Landlord of rem with knowledge of the breach of any envenant of this lease shall not be deemed a waiver of such breach. No provision of this lease shall not be deemed a waiver of such breach. No provision of this lease shall be deemed to have been waived by Landlord, unless such waiver be in writing signed by Landlord. No payment by Landlord this leave shall be deemed to have been waived by Landlord, unless such waiver be in writing signed by Landlord. No payment by Jenant or receipt by Landlord of a lesser amount than the rent herein stipulated shall be deemed to be other than on account of the earliest stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this lease provided.

Sobordination

16. This lease is and shall be subject and subordinate to all ground and underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which the demised premises forms a part and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgage. I count shall execute promptly any certificates that Landford may request in confirmation of such vuopordination and Tenant hereby constitutes and appoints Landford as Tenant's attorney-in-fact to execute any such certificates for and on behalf of Fenant.

Notices

17. Except as is otherwise herein provided, a bill, statement, notice or communication which Landford may desire or be required to give fenant, including any notice of termination or expiration, shall be deemed sufficiently given or rendered it in writing, delivered to fenant personality or sent by Reinstered or Certified Marit, addressed to Tenant at the building of which the demised premises is a part, or left at the demised premises so addressed to Tenant, the time of the rendition of such bill or statement and the giving of such notice or communication shall be deemed to be the time when the same is so delivered, mailed or left at the demised premises. Any notice by Tenant to Landford must be served by Registered or Certified Mail, addressed to Landford at the address first hereinabove set forth or such other address as Landford shall designate in the manner herein provided for giving notice to Tenant.

No

18. Except as provided in Article 10, no diminution or abatement of rent, or other charges shall be claimed or allowed for inconvenience or disconnect arising from the making of any decorations, repairs, alterations, improvements or additions in or to the demised premises or the building of which it is a part or the appurtenances, instures or equipment thereof, as Landford may deem necessary or desirable, not for any space taken to comply with any law, ordinance or order of a governmental authority. There shall be no diminution or abatement of rent, additional rent or other charges for interruption or curtainment of any services shall be deemed a constructive eviction. Tenant shall not be entitled to receive any services during any period when Tenant shall be in default in respect to the payment of any rent, additional rent or other charges.

Access to Premises

19. During four months prior to the expiration of the term hereby granted, applicants shall be admitted at all reasonable hours of the day to view the demised premises until rented. Landlord and Landlord's arent shall be permitted at any time during the term to visit and examine the demised premises at any reasonable nour during the day. Workmen, when authorized by Landlord or Landlord's agent, shall be admitted to the demised premises and to make decorations, repairs, alterations, improvements or additions in

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Paracraph PI (centinamet),
or pain of the demined premises or the building of which the same is a
of whenever demend premises or the building of which the same is a
of whenever demend necessary or destrance by Landlord. If Jenant shall
it he personally present to permit such entry into the demised premises,
additional in any manner affecting the other shans and cavenants of Jenant
should in any manner affecting the other shans and cavenants of Jenant
should be proposed. Landlord shall account reasonable care to
months property, without rendering Landlord shall account reasonable care to
months property, without rendering Landlord shall never of claim or cause of action to relatives by reason thereof. It, during
a bott month of the term, Jenant shall have removed all or substantially
of Tenant's property from the demised premises. Landlord shall have
oright to enter the demised premises for the purpose of cleanine and
decorating tame and the exercise of such right by Landlord shall have
oright to enter the demised premises of Jenant under this
to far the remainder of the term hereof. Jenant shall give to disky
nice to Landlord prior to vacatine the demised premises whether such
taking its prior to our at the termination date stated herein. Jenant's
distance to no advise Landlord shall be deemed a substant of a substantial
figurian of this leave. Jenant shall be hable for any damares mourred
of Jenandord by reason thereof, including to redecurate the demised premises
to the most tenant.

Quiet
Enjoyment
25. If and so long as Tenant pays the rent, additional
rent and other charges and perturns and emerces all
of the covenants and provisions hereot. Jenant may
leave and to the ground and underlying leases and mortgages bereinabuse

Ale Conditioning, the electric wiring as installed and maintained by Landlord, nor shall Tenant install and/or operate any clothes washing machines, dishwashing machines, or clothes drying machines. Ienant shall not install any other electric broilers, electric stoves, treezing units or any other electric equipment and/or appliances not furnished by Landlord without the prior written connect of the Landlord. Lenant shall not install any air conditioning equipment will not be grained unless Tenant wirst Landlord, which consent with a possible prior written consent of the Landlord, which consent will not be grained unless Tenant wirst Landlords air conditioner contract and pays the charges wated therein, a breach shall be deemed a substantial violation of the tenancy.

20. Landlord has made no representations or promresentations is respect to said building or to the demiced premiing except those contained herein. The taking provide
of the demixed premises by the Lenant shall be conclusive evidence,
gainst the Lenant, that said premises and the Development were in
a ond satisfactory condition at the time such possession was so taken.

21. Lendlord shall not be subject to any liability whatsoever for failure to give possession of the apartment to Tenant nor shall such failure to give possession affect the valuity of this indenture or the ubligations of bereunder nor shall such failure to give possession be construed of the term hereof but payment of the term licent reserved shall immone until the apartment is available for occupancy or upon the of occupancy, whichever is earlier.

ant has on deposit with Landlord the sum of

22. Tenant has on deposit with Landford the sum of 25.00 the receipt of which a bereby acknowledged, as security for the payment of rent and the perference of the covenants and conditions of this leave. In the event that fenant complies with such covenants and conditions and surrenders the himberd premises as herein required at the expiration of the term of this case, the said sum shall thereupon be returned to fenant 30 days after add surrender of the demised premises. In the event lenant details in respect of any of the terms, provisions and conditions of this leave, industrial days after adding, but not limited to, the payment of rent, additional rent or other thorges, Landford may use, apply or retain the whole or any part of the membry of deposited to the extent required for the payment of any rent, additional rent or other charges or any other sum as to which I enant is in affault or for any sum which Landford may expend or may be required any expend by reason of Ienant's default, including, but not limited to, any faminges or deficiency in the reletting of the demised premises, whether such damages or deficiency accured before or after summary proceedings or other reentry by Landford fenant covenants that it will not assum or meanmber or attempt to assum or encumber the monies deposited herein a security and that neither Landford nor its successors or assums shall so bound by such an assumment, encumbrance, altempted assignment or thempted encumbrance. Until further notice to lenant, security shall be add in trust by Landford and shall remain on deposit in a bank account meld in trust by Landurd and shall remain on deposit in a bank at it Emigrant Savings Bank, 5 East 42nd Street, New York, New

23. Landlord or Landlord's agents shall not be liable for any damage to or loss of property entrusted to their employees or agents nor for the loss of any property we deft or otherwise. Landlord or Landlord's agents shall not be itable for any injury or damage to persons or property resulting from siling shall not be itable for any injury or damage to persons or property resulting from siling shall not be itable for any other from the pines, appliances or piumbing method the same or from the street or sun-surface or from any other place or from dampness or any other cause of whatsoever nature, unless caused by or due to the neglicence of Landlord. Landlord's acents, servants or majorees. Landlord or Landlord's acents shall not be itable for any such famage caused by other training of the same or landlord, acents, servants or temployees. Landlord or Landlord or Landlord's acents shall not be itable for any damage or injury to Tenant, memners of Tenant's family. Tenant's servants, employees, agents, licensees or visitors in the use of the playground or other facilities furnished by Landlord, unless such damage or mijury shall have been caused by the neglicence of Landlord. Landlord may be any time, in Landlord's sole discretion, discountance, change or restrict the use of such playground or other facilities without in any manner offecting Tenant's lashifity hereunder to pay rent, adultional rent or other thorage or subjecting Landlord to any claim or famility and the use of such playground or other facilities shall at all times be subject to tuch notes and regulations as Landlord may from time to time extabilish. Landlord shall not be liable for the presence of buck, vermin or insects, if any, in the Development, nor shall trent presence of naw, way affect this lease. Landlord shall not be liable for any failure of water supply, gas or electric notes and particularly and shall be used for the storage of trunks, bags, includes and particularly and shall be used for the storage of trunks, bags, includes and particu

24. None of the acts, promises, covenants, agreements or obligations on the part of Tenant to be kept, performed or not performed, as the case may be, nor the obligation of Tenant to pay rent, additional rent or other charges, that he in any wise waved, impaired, excused or affected by reason of Landlord being unable at any time or limes during the term of this leave to supply, or being prevented from, or delayed in, supplising heat, high, to supply, or being prevented from, or delayed in, supplising heat, high, to supply, or being prevented from, or delayed in, supplising heat, high, to supply, or being prevented from, or delayed in, supplising heat, high, to supplie or decorations or to supply any equipment or fixtures, or any other promise, covenant, acreement or obligation on the part of Landlord is be promise, covenant, acreement or obligation on the part of Landlord is to be, rule or regulation of any Federal. State, Municipal or other governmental department, agency or subdivision thereof, or by reason of conditions of supply and derivand due to a National Energency or other conditions of supply and derivand due to a National Energency or other conditions of supply and derivand due to a National Energency or other conditions.

Walver of Total by

27. The parties hereto hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsiever arising out of or in any way com-

nected with B is lease. Tenant's use or occupancy of the demost premises, except as otherwise provided in Section 259-C of the Real Property Law of the State of New York.

Pminent

28. If the whole or any part of the denised premises shall be taken or condemned by any component authority for any public or quart public use or purpose, then, and in that event, the term of this leave shall cease and terminate from the date when the possession of the part to taken shall be required for such use or purpose and without apportionment of the award. If a substantial part of the Development shall be so taken or condemned as to make it uneconomical for Landford, as determined in Landford's sole discretion, to continue the operation of the demised premises then, at Landford's sole option and upon notice to Tenant from Landford, the term of this taste shall cease and terminate on the date when possession of the part so taken shall be required for such use or purpose and without apportionment of the award. The current rental, however shall in any such case be apportioned.

Window Cleaning

29. Tenant shall not require, permit or allow any window in the demised premises to be cleaned from the outside in violation of section 202 of the Labor es of the Board of Standards and Appeals, or of any Law or of the rules of the Board of Sother board or body having jurisdiction

Waiver of Right to Counterclaim 30. The Tenant shall plead no counterclaim or offset in any action or proceeding to recover rent or possession of the premises, the intent being that Tenant relegated to a separate action wherein he shall be the

Marginal Notes

31. The Marginal notes are inserted only as matter of convenience and for reference and in no way define, limit or describe the scope or intent of this lease, nor in any way affect this lease

Entire Agreement

32. This lease and the Tenant's application with respect thereto contain the entire agreement between the

spect thereto contain the entire agreement between the parties and any attempted change or modification thereof or discharge therefrom shall not be effective unless it is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought, and unless the prior approval of the Commissioner has been secured.

Supervision
by HDA and
Commissioner
Of Landford (a) as a Redevelopment Housene Company under the supervision and control of the HDA under the Law or any amendments thereto, and (b) to the supervision and control of the Commissioner under the Kegulatory Agreement.

34. The term "Landlord" as used in this lease means Definitions

34. The term "Landlord" as used in this lease means only the owner or the mortgages in possession for the time being of the land and building for the owner of a lease of the Building or of the land and buildings of which the demised premises forthis a part, so that in the exent of any sale or sailes of said land and building or of said lease, or in the exent of a lease of said building or of the land and building, the said Landlord shall be and bereby is entirely freed and relieved of all coverants and otherstoons of Landlord hereunder. Any and all rebits of Landlord hereunder, including but not limited to the collection of rent, service of notices and demands, and institution of leral proceedings, may be exercised by a duly authorized agent. The words "reinter" and "recenty" as used in this lease are not restricted to their reconsical legal meaning. and "reentry" legal meaning.

Bindleg

Effect

Standard in this leave shall bind and inure to the penent of Landlard and Tenant and, except as otherwise provided in this leave, their respective heirs, distributees, executors, administrators, successors and assigns.

No Pets

36. The Tenant covenants and agrees that the Tenant will not keep or maintain any doe, cat, other animal or pet in the demised premises. This covenant is a substantial obligation of this lease. No action on the part of the Landlord or of the agents, servants or employees of the Landlord shall constitute a waiver of this covenant. Should the Tenant violate the terms of sins covenant, the Landlord shall be entitled to terminate this lease by giving to the Tenant violate the terms of sins covenant, the Landlord shall be entitled to terminate this lease by giving to the Tenant violate the terms of since in writing, and the giving of such notice effectively terminates the term of this Lease with the same torce and effect as though the date therein specified were the oriental termination date. In addition, the Landlord shall have the right of injunction to enture the covenant and in any action for an injunction, it shall be presumed that the keeping of an animal by the Tenant on the premises constitutes a nuisance per se.

Services
37. The rental stipulated herein shall include the costs of all hot and cold water, janutur service, electric current, gas and heat (all of which utilities Landlord agrees to furnish to the Tenant at reasonable times and in reasonable amounts). Tenant agrees not to waste utilities furnished by Landlord and not to use utilities or equipment for any improper or unautinorized purpose.

m Witness Whereaf, the Landlord and Tenant have respectively signed and scaled this lease as of the day and year first above

Vitness for Landlord:			 HENRY PHIPPS PLAZA SOUTH, INC. By PHIPPS HOUSES SERVICES, INC.
	 	 	 Tobel Cleyt us
Vitness for Tenant:			 + (HIS MACK)
*	 	 	 Tenant's Signature (husband)

Marolan Sopa

CUARANTY

POR VALUE RECEIVED, and in consideration for, and as an inment to Landhard to enter into the foregoine leave, the undersigned
lifty and reseculty hereby inconditionally ponanty to Landhard, its
gesours and assens, the passinent of the rent, additional rent and other
to payable by Jenant possion to said leave and the full performance
observance by Jenant of all the other terms, coverants, conditions
agreements therein provided to be performed and observed by Jenant
houl requiring any native of non-pastion, non-performance or nonprivate, or proof of notice or demand, whereby to charge the undermed all of which the undersimed hereby expressly waite, and the indermed expressly agree that this guarantee shall not be terminated, allected
landslied in any way or manner whatsoever by reason of the assertion

by Vandlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of said lease, or by reason of sammary or other proceedings against Lemin, or by the romeson of Landlord to enforce any of its rights against Lemin, or by reason of any extensions of time or inslatences pranted by Landlord to Lemin the inslets and of the content and acree that this guaranty shall remain and continue in full force and effect as to any renewal, extension or modification of said lease. Further, the undersigned coverant and acree that in any action or proceeding brought by either Landlord or the undersigned against the other on any matters whatsuever aroung out of, indeer or by virtue of the terms of said lease or of this guaranty, the undersigned shall and do hereby waive trial by jury.

	GUARANTOR	(L.S.)	GUARANTOR (L.S.)
ADDRESS			ADDRESS
Dated:			
STATE OF NEW YORK CITY OF NEW YORK CUUNTY OF NEW YORK	} ss.:		
On this		19 ,	before me personally appeared and to be the person(s) mentioned and described in, and who executed
the foregoing guaranty			owledge to me that (he) (they) executed the same.

RULES AND REGULATIONS

- The sidewalks, entrances, passages, courts, elevators, vestibules, corridors and halls must not be obstructed or encumbered or any purpose other than ingress and egress as any from the
- No sign, advertisement, notice or other lettering shall be exhib-teribed, painted or affixed by Lenant on any part of the outside or if the demised premises or building without the prior written con-
- b. No awnings, serial, or other projections shall be attached to the de walls of the building, or to the balconies or terraces and no blinds, is or screens shall be attached to or hung in, or used in connection any window or door of the demised premises, without the prior is consent of Landlord.
- 4. No baby carriages, velocipedes, bicycles or any other similar dies shall be allowed in elevators nor allowed to stand in the halls, ageways, areas or courts of the building.
- 5 Children shall not play in the public halls, stairways, elevators or any of the exterior landscaped areas, except those areas designated by Landlord as play areas.
- 6. Supplies, goods and packages of every kind shall be delivered by at the entrance provided theretor, or in such manner as Landlord by provide and Landlord shall not be responsible for the loss or damage may such property whether or not left in the custody of Landlord's
- . The laundry and drying apparatus provided in the Development be used in such manner and at such times as Landlord may direct. It shall not dry or air clothes on the rout, balcony or terrace.
- 8. Lendlord may retain a pass key to the demised premises. Tenant and not after any lick or install a new lock or a knocker on any door of the demised premises without the written consent of Landlord. In case the consent is given. Tenant shall provide Landlord with an additional may for the use of Landlord pursuant to Landlord's right of access to the
- 9. Tenant shall not allow anything whatever to fall from the win-um or doors of the demised premises, nor stud sweep or throw from the malesed premises any dirt or other substance into any of the corridate balls, elevators, ventilators or elsewhere in the building.
- 10. We garbase cans, ice, milk bottles, mats or other articles that based in the halls or on the staircase landings, nor shall anything from the windows, terraces, or balconics, or placed upon the windows, terraces, or balconics, or placed upon the windows, doors, and or most be sharen as from or on any of the windows, doors, balconics or terraces.
 - Tenant shall not make or permit any disturbing numes in 1'd g by himself, his family, servants, employees, agents, statists and

licensees, nor do or permit anything by such persons that will interfere with the rights, comforts or convenience of the other tenants. Fenants shall not play or order to be played any musical instrument or operate or suffer to be operated a phonocrapia, television or radio in the demised premises between the hours of eleven P.M. and the following cent A.M. If the same shall disturb or annoy other occpants of the building. Fenant shall not give vocal or instrumental instruction in the demised premises at any time.

- 12. No radio or television installation shall be made without the written consent of Landlord. Any aerial erected on the root, balcony, terrace or exterior walls of the building without the consent of Landlord, in writing, may be removed by the Landlord without notice at the expense
- of Tenant.

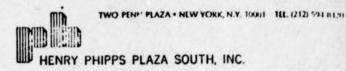
 13. Tenant will faithfully observe the following procedures with respect to the use of the compactor: (a) wrap dust, fluor and powdered waste in compact packages before depositing the same: (b) thoroughly drain and wrap in paper all parbace before depositing the same, (c) refrain from forcing targe bundles into the flue; (d) crush into tight bundles all lawse papers before placing the same in the hopper door; (e) cause all bundles of waste to slide out of the hopper into the flue; (1) refrain from depositing waste of an explosive nature therein.

 14. The water-closers and other plumping fixtures shall not be used.
- 14. The water-closets and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, nor shall any sweepings, rubbish, racs nor any other improper articles be thrown into the same; and the cost of repairing any damage resulting from misuse thereof shall be borne by Tenant by whom or upon whose premises it shall have been caused. it shall have been caused.
- 15. No servants or employees of Landlord shall be employed by Tenant at any time for any purpose.
- 16. Tenant shall reimburse or compensate Landlord for any damace or ir uses to the grounds or to trees, shrubs and plants in the Development, caused by any member of his family, servants, employees, agents, viutors and licensees.
- restors and licensees.

 17. Tenant and Tenant's family, guests, servants, employees, agents, visitors or licensees shall not at any time or for any reason whatsoever enter upon or attempt to enter upon the roof of the building.

 18. Tenant and Tenant's family, their servants, employees, agents, visitors and licensees shall not park any automobile or other sehicle in any of the parking areas received for tenants of the Development unless fenant shall have leaved space for parking in such area, in which care fenant shall have leaved space for parking in such area, in which care fenant shall have the right to park lenants automobile in such space in accordance with the provisions of Tenant's leave of such space.

 19. Tenant shall move into the demised premises only at a day and hour approved in advance by Landlord Landlord shall not be liable for any cours, expenses or damages incurred by Tenant in moving in, whether by reason of delays or otherwise.



January 12, 1973

Thomas Lopez and Narciza Lopez 330 East 26th Street New York, N.Y. 10010

Dear Sir and Madam:

We regret to inform you that it has been decided not to renew your lease for apartment 8J, 330 East 26th Street, New York, N.Y. which expired December 31, 1972, for the following reasons:

- a staff member, observed something being thrown out of the window of your apartment. A letter informing you of this incident was sent to you by the manager on June 25, 1971.
 - 2. On December 27, 1971 a letter was sent to you informing you of acts of vandalism to fire hoses
 and elevators by your son, Jose.
 - Sr. was found lying on the floor of the lobby of

 330 East 26th Street with glass from a broken whiskey bottle on the floor. Mr. Lopez struggled with
 building security guards and New York City police
 were called. The police found that Mr. Lopez was
 armed with a knife. On March 22, 1972 a letter was
 sent to you informing you of these facts.
 - 4. On March 22, 1972 your two sons ages 13 and 15, were found sleeping in a car in the building garage pat 2:40 a.m.; sleeping in the 7th floor stairwell of the "E" building at 4:30 a.m.; sleeping on the 13th floor stairwell of the "E" building at 6:30 a.m.; and sleeping in the 24th floor stairwell of the "F" building at 8:15 a.m. A letter informing you of these facts was sent to you on March 22, 1972. That same day at 8:30 p.m. your son, Thomas was found loitering in the 12th floor stairwell.

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Not Prosen 5. On March 30, 1972, your sons were again found sleeping in a car in the building garage.

- Your sons were <u>suspected</u> of having stolen tools, keys and clothes from the elevator room on March 31, 1972.
- not Prove On April 13, 1972, at about 5:00 p.m. New York City police made a criminal report with reference to activities of your two sons.
- On June 23, 1972 your sons were accused by a fellow tenant of tampering with the lock of apartment 86 tenant of tampering with the lock of apartment 8G in the "E" building.
 - On July 6, 1972 at about 8:30 p.m. your son, Thomas, it have
- On July 8, 1972 New York City police called at your apartment.
- On August 7, 1972 at about 5:00 p.m. detectives from the Burglary and Larceny Division of the New York the Burglary and Larceny Division of the New York City Police Department sought your son, Thomas, for questioning with reference to the breaking and enterilig into a locksmith's truck.
- 12. On November 14, 1972 at about 11:00 a.m. your son,
 Thomas was arrested by New York City police from the
 13th Precinct with reference to a robbery. (Note win

On December 19, 1972 at about 3:00 a.m. your son, Thomas, was shot by a New York City policeman while policeman 36th Street, New York, N.Y...

suffer in You may appeal this decision and have it reviewed provided your request in writing for such review is received within fifteen days from the date of this letter. Your request for review may be accompanied by any information having a bearing on the charges listed above. In your request for review, you may also ask for a hearing at which you may be represented by an attorney. You may arrange to have witnesses present at such hearing.

20

If your request for review is not received within fifteen days, or if the decision not to renew your lease is affirmed after review, summary proceedings will be commenced for your removal from the apartment because of the termination of your lease. You will not be permitted to contest the reasons for the refusal to renew your lease in those proceedings.

Of course, in the event the decision is reversed after review, we will submit a new lease to you.

Very truly yours,

HENRY PHIPPS PLAZA SOUTH, INC.

Duncan Flder, President

DE/jmd

HENRY PHIPPS PLAZA COUTH, INC. Two Penn Plaza New York, N. Y. 10001

(212) 594-8320

Decision

RE: THOMAS and NARCIZA LOPEZ, Apartment 8J, 330 East 26th Street, New York, N.Y.

Hearings: Pebruary 27, 1973, March 6, 1973 and May 2, 1973 at Management Office, 330 East 26th Street, New York, N.Y.

Present on Pebruary 27, 1973:

Hoaring Officer: John Codman, Manager, Lambert Houses, The Bronx, N.Y.

Attorney for Landlord: Joseph Dolman of Whitehorn & Delman
Attorney for Tenant: Lisa Blitman, Esq. of MPY Legal Services, Inc.
Ms. Mary Febrenbach, Manager, Henry Phipps Plaza South, Inc.
John Lopez, Employee, Henry Phipps Plaza South, Inc.
Angel Vega, Security Quard

Carlos Vargas, 444 Second Avenue, New York, N.Y., present at request of tenant.

Tenant: Narciza Lopez

The hearing of Pebruary 27, 1973 was adjourned at the request of the attorney for the tenant to afford an opportunity to obtain an interpreter to interpret the testimony

WUL 16 1973

of witnesses of the tenant, Narciza Lopez, to aid her and her counsel at the hearing and to interpret her testimony if she should testify.

Present on March 6, 1973:

Hearing Officer: John Codman

Attorney for Landlord: Joseph Delman of Whitehorn & Delman
Attorney for Tenant: Lina Blitman, Esq. of MFY Legal Services, Inc.
Ms. Mary Pehrenbach, Manager, Henry Phipps Plaza South, Inc.
Translator: Adele MacGowan, 110 Thompson Street, New York,

M.Y., Vista Volunteer

John Lopez, Employee, Henry Phipps Plaza South, Inc. Tenants: Thomas Lopez, Narciza Lopez and Thomas Lopez, Jr.

By letter dated January 10, 1973, the landlord informed the tenant that it had decided not to renew the lease for their apartment for the reasons set forth in the letter numbered 1 through 13. The letter afforded the tenant an epportunity to have the decision reviewed and to request a hearing at which tenant may be represented by counsel.

Exp letter dated January 17, 1973, Lisa H. Blitman, Esq. of MFY Legal Services, Inc. informed the landlord that she represented the tenant, that a hearing was requested and further requested an opportunity to examine the landlord's file in connection with the tenant and to inspect all records

intended to be introduced at the hearing.

By letter dated February 1, 1973, the landlord set a date, time and place for the hearing and furnished copies of the documents requested upon which the landlord intended to rely at the hearing and the names of the witnesses intended to be presented by the landlord.

The landlord presented the testimony of Security Quards Douglas, Parnell, Vega, Steward and Superintendent Blueford.

The attorney for the tenant stated that her representation was limited to the tenant Narciza Lopez and that she did not represent the tenant Thomas Lopez. Ms. Blitman refused to permit the tenant Narciza Lopez or her son, Thomas Lopez, Jr., to testify. The tenant Thomas Lopez testified at the hearing.

I shall hereafter discuss each of the charges contained in the letter of January 12, 1973 and the evidence submitted in connection with each charge:

Charge No. 1: Mary Pehrenbach submitted in support of charge No. 1 a file memorandum which she identified as being in the handwriting of a former employee and which she said was kept and maintained in the tenant's file in the ordinary course of landlord's business. The memorandum states that on June 24, 1971, at about 10:30 a.m., the writer "observed

something (?) being thrown from a window of the subject apartment. Ms. Febrenbach similarly submitted with the same qualification a copy of a letter of the former manager of the project to the tenant, dated June 25, 1971, complaining of the incident. Ms. Pehrenbach stated that neither the former employee nor former manager were employed or under the control of the landlord.

Thomas Lopez testified that he never saw anyone throw anything out of any window in his apartment and never received the letter. He stated that his wife sometimes gives him the mail and sometimes puts it away because she does not understand English.

Under the circumstances, in the absence of further corroborative testimony on behalf of the landlord and in face of the denial by the tenant, I find this charge not proven.

However, the file information and correspondence set forth in connection with this charge and with charge No. 2 should have alerted the tenant to the possibility of improper conduct on the part of the children of the family.

Charge No. 2: In support of this charge, Ms.

Pehrenbach submitted her letter, dated December 27, 1971, informing the tenant of acts of vandalism to fire hoses and elevators by their son. The letter also warned the tenant of the possibility of refusal to renew the lease.

I cannot and do not accept the letter as proof of the commission of the acts claimed by the son of the tenant. However, I do accept the letter to the extent that the tenant was again notified of charges of improper and unlawful conduct on the part of a member of the family.

Charge No. 3: Security Guard Douglas testified that he found the tenant Lopez drunk in the lobby of 330 East 26th Street. The tenant swung at the security guard who told him to go upstairs. The tenant took a liquor bottle out of his pocket and it shattered on the floor. The tenant then swung again at the security guard and fell to the floor. Police came, found a knife on the person of the tenant, took the tenant upstairs and returned the knife to the tenant's son. Security Quard Parnell testified to the same effect and identified the knife as 4 to 6 inches long with a hooked point. He further testified that 15 or 20 people were present and that three squad cars attended. He said the tenant was staggering. His testimony differed from Security Guard Douglas in certain minor respects, for example, he said that the liquor bottle was smashed by the tenant on the wall instead of on the floor as the other security guard had testified.

The tenant testified that he had been drinking but was not drunk. He denied carrying a knife and stated that he

various buildings in the premises. Security Guard Vega testified to finding the two Lopez boys sleeping in the stairwell on March 22, 1972 at 3:15 a.m. Miss Pehrenbach submitted a letter to the tenant dated March 22, 1972 informing the tenant of the conduct of the two sons. There was no testimony to contradict the testimony of the security guards. I find that the charge has been proven to the extent that it indicates a general lack of supervision by the tenant over the activities of their children and again, notice to the parents of the improper conduct of their children. Although the charge is neither serious nor substantial, it must be considered in the general context of the activities of the members of the Lopez family.

Charge No. 5: No testimony was submitted in support of this charge and I find it to be not proven. The security guard involved is no longer employed by the landlord.

charge No. 6: Security Guard Douglas testified that an elevator room in the premises was broken into and various items of tools and clothing were stolen. Certain keys to areas of the premises contained in that room were also stolen. The keys were returned by Mrs. Lopez who stated that she found them on the floor of the lobby in the building. The security guard testified that he had been patroling the lobby and had the keys been there he would have seen them. He recalled seeing

the Lopez children loitering in the lobby at about the time the break-in must have occurred although this was not the building in which they resided. The police report of the incidents does not evidence any arrest or charge against any person.

Although the incident might be considered "suspicious" there was insufficient evidence to find the Lopez children were involved in the unlawful entry or were suspected, charged or arrested by the police for such unlawful entry. It is interesting, however, to note that the tenant, Narcize Lopez, who returned the keys, refused to testify as to any aspect of this charge or to contradict the testimony of the security guard.

charge No. 7: There was no testimony in support of charge number 7 and I consider the charge not proven.

Charge No. 8: Security Quard Vega testified that
after the accusation contained in the charge was made he spoke
to the Lopez children and their mother. The children stated
to him that they had "found the key in the hallway and were
only testing it in the other tenant's door". The conduct
referred to is of a nature dangerous to the safety and wellbeing of other tenants of the development and is serious and
substantial. I find the charge proven. Neither the Lope: boy
who was present at the hearing nor his mother had anything to

say to contradict the testimony of the security guard.

Charge No. 9: There was no testimony in support of this charge and I find it not proven.

Charge No. 10: In support of this charge at the bearing of May 2, 1973, there was submitted a record of the Communications Bureau of the Police Department dated July 8, 1972 setting forth that at 5:42 p.m. that day they received a 10-50 (disorderly person) complaint for Lopez at the tenant's apartment "breaking and throwing objects". The disposition was 10-91 (condition corrected). I find the charge proven.

Charge No. 11: There was no evidence submitted in support of charge number 11 and I find the charge not proven.

Charge No. 12: At the hearing of May 2, 1973, there was submitted an arrest record of the Police Department of the City of New York setting forth that on November 14, 1972, at 9:30 a.m., Thomas Lopez, age 17 of 330 East 26th Street, Manhattan, was arrested for a felonious burglary (Penal Law Section 140.20) and felonious criminal mischief (Penal Law Section 145.05), which acts were committed at 530 Second Avenue, New York, N.Y. The arrest was made at the subject premises. I find this charge proven, serious, substantial and warranting a refusal to renew the tenant's lease.

Charge No. 13: At the hearing of May 2, 1973, there

was submitted an arrest record of Thomas Lopez, age 16, of the subject premises for burglary (Penal Law Section 140.25), criminal possession of a dangerous instrument (Penal Law Section 265.05 subdivision 9) and menacing (Penal Law Section 120.15) committed at General Medical Book Company, 310 East 26th Street, on December 19, 1972. The arresting officer is set forth as Patrolman Kevin J. Cusker, Shield No. 9839, 13th Precinct. The record indicates that the prisoner sustained a gunshot wound and was sent to Bellevue Hospital.

and testified that at 3:25 a.m. on December 19, 1972, he responded to a burglary in progress signal at the bookstore at 310 East 26th Street. He saw Thomas Lopez, the son of the tenant, in the rear of the store and when he ordered the Lopez boy to halt, the boy ran into the bathroom in the rear and elimbed to the ceiling where tiles had been removed. The Lopez boy pointed a gun at the officer who shot him. Pound in the ceiling at the premises was the other son of the tenant, Jose Lopez. Thomas Lopez was indicted by the New York County Grand Jury and trial is pending in the Supreme Court, New York County. Jose Lopez was adjudged a juvenile delinquent and was remanded to a New York State Correction institution. Patrolman Gusker also testified that in the winter of 1972, he assisted

in the arrest of Jose Lopez, one of the tenant's sons, who was found at about 4:00 a.m., at 28th Street and Second Avenue in possession of a loaded fire arm and a bunch of knives. He further testified that Thomas Lopez, Jr. was addicted to drugs and at the age of 16-1 had been arrested four times for burglary. Jose Lopez, the other son, had two arrests.

I find charge number 13 to have been fully proven, to be serious and substantial and, by itself, to furnish a sufficient basis for refusal to renew the tenant's lease.

Present on May 2, 1973:

Hearing Officer: John Codman

Attorney for Landlord: Joseph Delman of Whitehorn & Delman Ms. Mary Febrenbach, Manager, Henry Phipps Plaza South, Inc. John Lopez, Employee, Henry Phipps Plaza South, Inc. Petrolman Kevin J. Cusker, Shield No. 9839, 13th Precinct Patrolman Thaddeus Magierski, Shield No. 19607, Communications Bureau.

As previously indicated, a further hearing was held on May 2, 1973. The hearing was held upon the request of the manager and notice of the hearing and of certain additional charges was furnished to the tenants and their attorney by letter dated April 16, 1973.

The attorney for the landlord made a motion, on notice to the attorney for the tenant, for the issuance of a subpoena to the Police Department. The motion papers also set forth the hearing date of May 2, 1973. The attorney for the tenant opposed the motion but it was nevertheless granted.

This history is set forth so that there be no doubt that the tenant and their attorney were fully informed that a hearing would be held on May 2, 1973.

On that date I delayed the commencement of the hearing until 2:40 p.m. for the arrival of the tenant and their attorney. When they did not appear I assumed that with the granting of the motion for the subpoens for police records, the attorney for the tenant recognized that the position of the tenant was untenable and indefensible and so advised her clients.

The information and records received at the hearing of May 2, 1973 has already been alluded to insofar as it affected the charges contained in the notice of charges dated January 12, 1973. The letter of April 16, 1973 to the tenant and their attorney set forth two additional charges. Each of these charges will now be considered:

'Charge No. 1 of April 16, 1973: No testimony was received in support of this charge and I consider it not proven.

Charge No. 2 of April 16, 1973: In support of this charge there was submitted an arrest record setting forth the arrest of Thomas Lopez, age 49, of 330 East 26th Street, New York, N.Y., Apartment 8J, of charges of reckless endangerment (Penal Law Section 120.20), possession of a dangerous instrument (Penal Law Section 265.05-10) and resisting arrest (Fonal Law Section 205.0) the details set forth in the arrest record are as follows:

"At time of place and occurrence subject attempted to grab my gun I struggled with him He pulled knife and attempted to use same."

The arrest record indicates that the prisoner was drunk. There was also submitted a copy of a complaint in the Criminal Court of the City of New York against the prisoner of charges of possession of a dangerous instrument (Penal Law Section 265.05-10) and public intoxication (Penal Law Section 240.40) the complaint states:

"Deponent states that defendant reached for deponents gun and then drew a knife on deponent requiring the use of necessary force in effecting arrest of defendant

"Deponent further states that the defendant was unsteady on his feet, his breath smelled of alcohol and his eyes were bloodshot." I find the charge proven, serious and substantial and sufficient cause in and of itself for refusal to renew the tenant's lease.

In summation, charges 3, 8, 10, 12 and 13 of the letter of January 12, 1973 and charge 2 of the letter of April 16, 1973 are all serious, substantial and warrant a finding that the continued occupancy of the tenant at the subject premises would constitute a real danger to the health, safety and well-being of the other occupants of the development. I find all of these charges to have been overwhelmingly proven without contradiction and that they furnish substantial grounds for the refusal by the landlord to renew the tenant's lense. I thus find that such action by the landlord was neither arbitrary nor capricious and was in fact supported by substantial evidence.

Dated: July 10 . 1973.

JOHN CODMAN, Hearing Officer

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

MARCISA LOPEZ,

Civil Action No. 73CIV4009

Plaintiff,

-against-

APPIDAVIT IN OPPOSITION

HENRY PHIPPS PLAZA SOUTH, INC.,

Defendant.

COUNTY OF NEW YORK

JOSEPH DELMAN, being duly sworn, deposes and says:

I am a member of the firm of Whitehorn & Delman,
attorneys for the defendant and make this affidavit in opposition
to the plaintiff's motion for a preliminary injunction.

I am fully and personally familiar with the various facts set forth in this affidavit since I personally attended all of the hearings referred to and conducted the summary proceeding referred to in the motion papers.

It is incumbent upon me to note that the moving affidavit of MARTIN ATWOOD HOTVET sworn to September 18, 1973 states
that as counsel to the attorney of record for the plaintiff
he is "fully conversant with the facts and circumstances of this
matter." MR. HOTVET never attended any of the hearings, never
signed any correspondence or had any conversations with your
deponent with reference to this matter until after commencement
of the summary proceedings referred to in the motion papers.
His affidavit, thus, is not based on any personal knowledge
of the facts.

The moving affidavit sets forth grounds for the motion each of which will hereafter be separately discussed.

(a) (1) The hearing officer was employed as manager of another Phipps project.

The initial determination not to renew the lease was made by Mary Pehrenbach, site manager and registered managing agent for the defendant's project. The determination was conveyed to the plaintiff and her husband, the tenants, by letter dated January 12, 1973, a copy of which is annexed to the moving papers. Plaintiff requested a hearing and John Codman was appointed by defendant to act as hearing officer. Mr. Codman is site manager and registered managing agent of Lambert Bouses, a project in the Bronx owned by Lambert Houses Redevelopment Corporation. Both Lambert Houses and the defendant were sponsored by Phipps Houses and management services are supplied to both by Phipps Houses Services, Inc. Mr. Codman, the hearing officer, is not involved, directly or indirectly in the management decisions of the defendant's project nor is Mary Fehrenbach involved, directly or indirectly in the management decisions of Lambert Houses Mr. Codman was not involved in any way in the initial determination by Mary Pehrenbach not to renew the tenants' lease. In fact, outside of holding similar highly responsible positions in similar projects under the aegis of a charitable foundation sponsoring, constructing and operating many projects affording decent housing to persons of low income, there is no connection between them and no basis for any claim or suspicion of prejudice. Plaintiff'sapparent contention that the requirements of due process prohibit such a hearing officer from being appointed would, of necessity, cast doubt on the due process afforded in administrative proceedings of all governmental aseries, federal, state and municipal, all quasi public corporations, unions and other unincorporated associations where, traditionally the hearing officers are connected, usually as employees, with the agency conducting the proceeding. Due

process requires, in the spirit of fairness, that the hearing officer have no prior participation in the matter being reviewed. It has never required that the hearing officer be one wholly unconnected with the agency conducting the hearing.

(a) (2) The hearing officer made statements "before the hearing indicating bias against the plaintiff."

The sole basis for this most serious allegation is the statement in the supporting affirmation of LISA H. BLITMAN, dated September 11, 1973, that "Mr. Codman stated to her that he thought the allegations against Mrs. Lopez and her family were sufficient to justify Phipps Houses terminating her tenancy." Your deponent was present at the hearing of March 6, 1973, when the statement was made. Prior to hearing the witnesses' testimony, Mr. Codman asked MISS BLITMAN the nature of the tenants' response to the charges enumerated in the letter of January 12, 1973. He asked wnether the tenants admitted or denied the particular numbered charges. MISS BLITMAN responded that the tenants interposed a "General Denial" to all charges. Mr. Codman pressed for a more particular admission or denial, in whole or in part, to the enumerated charges but MISS BLITMAN refused. When Mr. Codman requested the grounds for her refusal, MISS BLITMAN stated that in her opinion the charges set forth in the letter of January 12, 1973 were insufficient to sustain the determination sought to be reviewed. Mr. Codman then stated that the acts set forth and alleged in the letter of January 12, 1973 were, in his opinion, sufficient to sustain the determination. In legal terms, MISS BLITMAN demurred to the charges and Mr. Codman overruled the demurral. Mr. Codman is not a member of the bar.

⁽b) No regulations covering refusal to renew leases and grounds therefor were made available to the plaintiff before the hearing and no such regulations exist.

There are no "regulations" covering the manager's initial determination not to renew the lease and your deponent is unaware of any requirement of due process that there be any such "regulations". It is interesting to note that no request or demand for any such "regulations" was ever made. As to "specific grounds" for refusal to renew, the specific grounds were set forth in writing in two notices to the tenants, one of which the letter of January 12, 1973 is annexed to the moving papers and the other, a letter of April 16, 1973, is annexed hereto. If plaintiff is referring to ground rules covering the conduct of the hearing, they most certainly were set forth in motices sent to the tenants and their atterney. They include:

- 1. Written notice of charges
- 2. Right to a hearing
- 3. Right to counsel
- 4. Right to present witnesses
- 5. Right to confront and cross-examine witnesses
- Right to prior knowledge of the witnesses and documents which the landlord intended to offer at the hearing.

All of these rights were afforded to the tenants who accepted all of their benefits without prejudice at the time of the hearing or thereafter until the commencement of this action.

(c) The evidence was insufficient to establish an objectionable tenancy under State Law.

It would be proper to respond that due process does not require proof that the tenant is "objectionable" under State Law, but only an opportunity for the tenant to respond to and rebut the charges and demonstrate that the initial determination did violence to the tenants' rights because it was the result of some personal pique on the part of the manager,

was retaliatory for the exercise by the tenants of their rights or was otherwise unreasonable, arbitrary and capricious. The plaintiff did not attempt to and did not make any showing whatsoever. She presented no witnesses. She refused, on advice of counsel, to testify. She refused on advice of counsel to permit her son to testify. Despite the lack of any obligation so to do, the landlord proceeded to conclusively prove the following:

- 1. On March 20, 1972 the tenant, THOMAS LOPEZ, while intoxicated in the public lobby of the building, attempted to attack a security guard with a knife.
- On June 23, 1972 the tenants' sons attempted unlawful entry into another tenant's apartment.
- 3. On November 14, 1972 one of the tenants' sons was arrested for felonious burglary and felonious criminal mischief.
- 4. On December 19, 1972 one of 'he tenants' sons was arrested for burglary, criminal possession of a dangerous instrument and menacing, sustained a gunshot wound from a police officer at whom he pointed a gun, was indicted by a Grand Jury and trial was pending. The other son, as a result of the same incident was adjudged a juvenile delinquent and remanded to a correction institution.
- 5. One of the tenants' sons was arrested at 4:00 A.M., one block away from the project in possession of a loaded firearm and a bunch of knives.
- 6. One of the tenants' sons was addicted to drugs and by the age of 16-1/2 had been arrested four times for burglary.
- 7. On March 24, 1973 the tenant, THOMAS LOPEZ, was arrested in the lobby of the premises on charges of reckless endangerment, possession of a dangerous instrument, resisting arrest and public intoxication, when, while armed with a knife, he attempted to get possession of the arresting officer's gun.

Police records in support of these findings are annexed hereto. We see no point in any further discussion of the plaintiff's claim of insufficiency of the evidence.

Plaintiff had the opportunity to commence this action since January 12, 1973 when she received notice of the initial determination and of the charges but instead chose to participate in the hearings. Even the decision of the hearing officer of July 10, 1973 did not move her to enforce the constitutional rights of which she claims she was deprived until the day before the return of a summary proceeding for her eviction.

Plaintiff also had the right to review the decision of July 10, 1973 by a proceeding in the Supreme Court of the State of New York under Article 78 CPIR. The courts of the State of New York can hardly be accused of Tailing to enforce the constitutional rights of tenants to due process when a violation of those rights has occurred.

rent has been paid for the premises in question since December, 1972 and the Civil Court has determined, after trial, that there is presently due and owing the sum of \$1,504.10 for use and occupancy of the premises. A true copy of the final judgment of the Civil Court is annexed.

Under the circumstances here revealed the commencement of this action was, to say the least, most unwise.

Sworn to before me this
Octive
("T day of September, 1973

JOSEPH DELL'AN

MFY LEGAL SERVICES, INC.

214 EAST 2ND ST., NEW YORK, N. Y. 10009 • 777-5250

GEORGE C STEWART

MICHAEL D. KAUFMAN

Allorneys
RONALD G. BAUER
LISA H. BLITMAN
EUGENE RAKOW
JACQUES F. ROSE
CAROL ULE
THEODORE W. ZEICHNER
MARY MARSH ZULACK

January 17, 1973



Duncan Elder, President
Henry Phipps Plaza South, Inc.
2 Penn Plaza
New York, New York 10001

-/ (W

Dear Mr. Elder:

Please Le advised that this office has been retained to represent Mr. & Mrs. Thomas Lopez of 330 East 26th Street, Apartment 8-J. We are hereby requesting a hearing on your decision not to permit the Lopez family to continue their tenancy. I would also like an opportunity to examine the file which you have on the Lopez family and to inspect all records which you intend to introduce at the hearing.

Please contact me regarding this as soon as possible.

Thank you for your cooperation.

Very truly yours,

Sisa N. Bitman

LISA H. BLITMAN

LHB:nsc

P/c Mary Februar ESQ.

Pebruary 1, 1973

MFY Legal Services, Inc. 214 East Second Street New York, N.Y. 10009

Att: Lisa H. Blitman, Esq.

Re: Lopez, Apartment 8J 330 East 26th Street

Gentlemen:

We have received your letter of January 17, 1973 in response to our letter of January 10, 1973.

Your request for a hearing is granted and it will be held before a hearing officer who had no previous participation in the determination sought to be reviewed on Tuesday, February 13, 1973 at 2:00 p.m. at the Management Office, 2nd Floor, 330 East 26th Street, New York, N.Y.

The nature and function of the hearing will be for the purpose of granting the tenants an opportunity to be heard in order to explain or negative the causes for the denial of lease renewal and an opportunity to deny or explain that the landlord has not acted arbitrarily or capriciously. The hearing will be a limited rather than a full evidentiary hearing.

A transcript of the hearing will not be furnished. However, if you desire a transcript of the hearing, you may arrange, at your client's expense, to have a stenographer present.

You will have the opportunity to cross examine and confront any witnesses presented by the landlord and you may arrange to have witnesses present at the hearing.

The following are the names and identification of the various persons whom the landlord may present as witnesses at the hearing in support of the particular charges as numbered in our letter to you of January 10, 1973;

 File memorandum and letter of June 25, 1971, copies of which are enclosed.

Letter of December 27, 1971, a copy of which is 2. enclosed.

3.

Socurity guards, Parnell and Douglas. Socurity guards, Parnell and Vega, and reports of security guards Torres and Ames, and letter dated March 22, 1972, a copy of which is enclosed.

Reports of security guard, Ames. 5.

6. Security guards, Douglas and Parnell.

7. Security guard, Vega. 8. Security guard, Vega.

Report of security guard, Harris. 9. 10. Report of security guard, Harris.

Security guard, Stewart. 11.

12.

Security guard, Vega, Superintendent, Blueford and Security guard, Vega, Superintendent, Blueford and 13. news items in the New York Daily News and New York Times of December 20, 1972.

If for any reason the date and time set for the conference is in convenient for you, we will be pleased to adjourn the date upon receipt of your request for such adjournment at least 48 hours before the time set for the hearing.

> Very truly yours, HENRY PHIPPS PLAZA SOUTH, INC.

Duncan Elder, President

DE/jmd co. J. Delman / HENRY PHIPPS PLAZA SOUTH, INC.

LETTER OF DEFENDANT DATED APRIL 16, 1973
April 16, 1973

Lisa H. Blitman, Esq. MFY Legal Services, Inc. 214 East 2nd Street New York, N.Y. 10009

> Re: Thomas and Narciza Lopez Apt. 8 J. 330 East 26th Street

Dear Madam:

Upon the request of the manager, the hearing officer has reopened the hearing held March 6, 1973 for consideration of the following additional charges which arose after the hearing was held:

- 1. On March 17, 1973 at about 10:50 p.m. Thomas Lopez was drinking liquor in front of the building, 330 Fast 26th Street, New York, N.Y., was drunk and rowdy and cursing. At door to 330 East 26th Street, New York, N.Y. Thomas Lopez was armed with a long sword and threatened to use it on Security Guard Parnell.
- 2. On March 23, 1973 at about 9:00 p.m. Thomas Lopez was in the outer hallway of 330 East 26th Street, New York, N.Y. and demanded that an armed security guard open the door for him. When the guard refused, Mr. Lopez attempted to take the guard's revolver and when prevented, treatened the guard with a knife. Mr. Lopez was disarmed, arrested, charged and booked at the 13th Police Precinct for the following crimes:

Reckless endangerment Arrest No. 967
Felonious assault ""
Resisting arrest ""
Public intoxication ""

The Police Department determined that Mr. Lopez had jumped bail on a previous arrest for felonious assault on a public officer and a warrant was outstanding for his arrest on this charge.

The further reopened hearing will be held before the officer who conducted the original hearing on May 2, 1973 at 2:00 p.m. at the management office, 2nd floor, 330 East 26th Street, New York, N.Y.

Lisa H. Blitman, Esq.

Page 2 April 16, 1973

The manager intends to present Peter Morales, an employee of Wakefield Detective Bureau, Inc., and police records in support of these charges.

Either you or the manager may submit at the hearing any witnesses or evidence in support or opposition to these charges and any evidence to supplement the hearing record of March 6, 1973 with reference to the charges then considered.

If your witnesses will require an interpreter, or you wish an interpreter to inform your clients of the nature of the evidence being presented, please have one present. The manager will have an employee available, conversant with the Spanish language and you may avail yourself of his services, without charge, if you desire them.

Very truly yours,

HENRY PHIPPS FLAZA SOUTH, INC.

By

Duncan Elder, President

Thomas & Narciza Lopez Apt. 8 J 330 East 26th Street New York, N.Y. 10010



POLICE DEPARTMENT

NEW YORK, N. Y. 10013

SUBPOENA	NO.	
DO DI OTTIVI	1.0.	

COMMUNICATIONS DIVISION

CERTIFICATION

RECORDS: SPRINT

PRECINCT 13

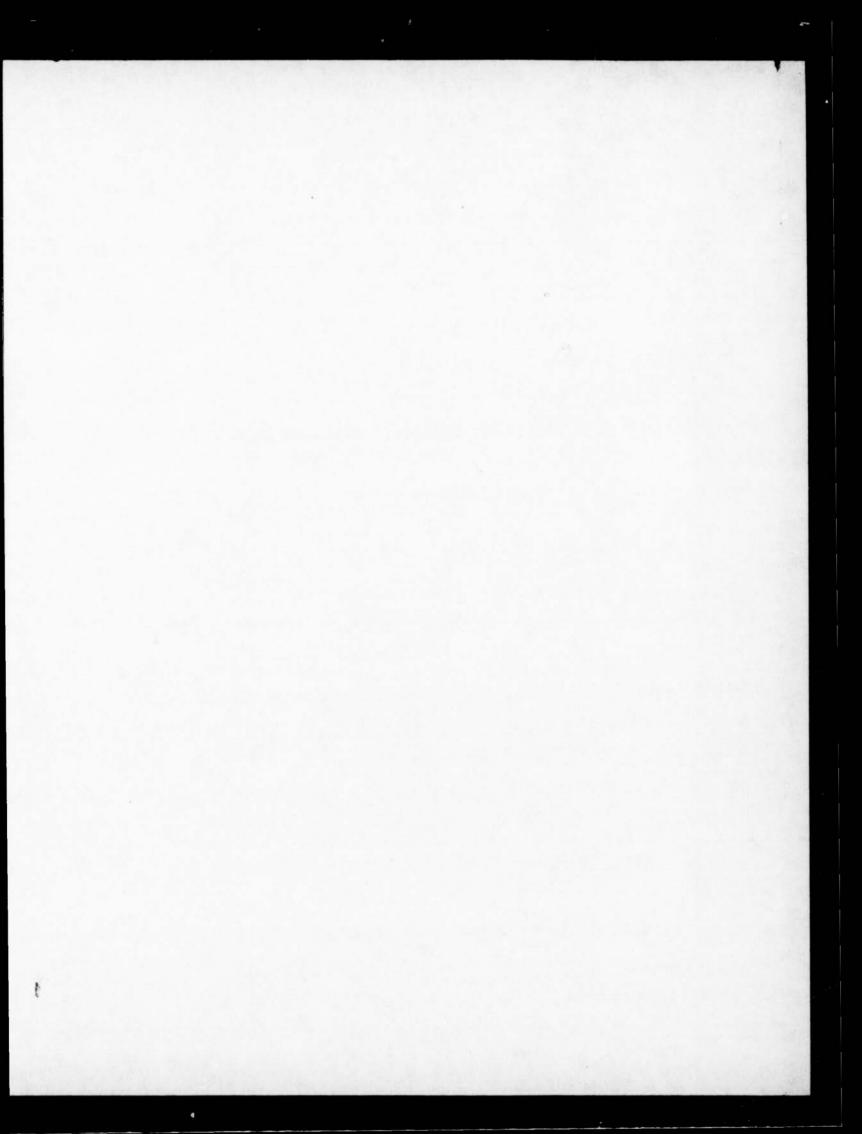
YEAR 1973

State of New York County of New York

This is to certify that this is a true copy of a record in the custody of the Communications Division of the Police Department of the City of New York.

Commanding Officer Communications Division

DATE: 5/2/73 REFERENCE - TEL. 577-7521



POLICE INCIDENT RECORD LISTINGS

INCIDENT RECORD LISTING BY JCH NUMBER	JULY 8, 1972 PAGE NO. 1351
INSIGENT SECTED 1 MAN 6 280 TOT 1741 DOG 1743 506777	INCIDENT RECORD 1 0145 16 1050 TO6 1742 016 1745 506778
10.51CFNT SECTED 1 MAN 6 280 TOL 1741 DOG 1743 506777 10-24 SC PITTE 14 PROFITING: L N N CCD 487686 UF 61 8236 CC 25 143 6 127 ST LENDY AVE -7 /VE	HOUTING: D B N CCC UF61 CC
DUPLICATE JEW NUMBER NONE	DUPLICATE JOB NUMBER NONE 01 TO6 1742 SC MR JACOBSON OPER 182-3
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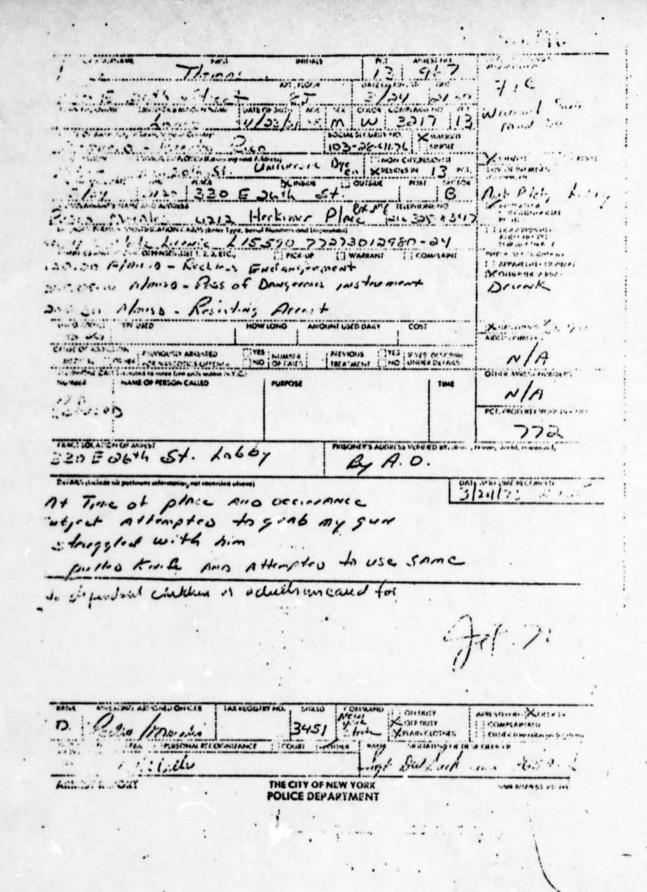
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CRIMINAL COURT COMPLAINT BERES LIBAROSANTA ME HA SICIAN

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Criminal Court of the City of New York

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	Possession of Dangerous Instrument
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Deponent states that defendant reached for deponents gun and then arew a knife on deponent requiring the use of necessary force in effecting an arrest of defendant.

dependent further states that defendant was unsteady on his fact, his breath smelled of alcohol and his eyes were bloodshot

FINAL JUDGMENT OF CIVIL COURT

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Throughty frage Petitioner

INDEX NUMBER L&T 75/27 YEAR 1927

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF 71.51

— against —	HOLDOVER
Therende Juny & Respondent	Decision & Final Judgment of Possession
Marcing. Joy	.
Respondent Undertenant	
The RESPONDENT(S) and the RESPONDENT	UNDERTENANT S) having failed to ap-
(or)	0.4573
The issues in this proceeding having come on for	
and the Court having rendered a	decision in favor of the (or) RESPONDENT(S)
FINAL JUDGMENT OF POSSESSION as made missing the petition on the merits (or) without prejudice posed a counterclaim, said counterclaim is dismissed or	ce. The RESPONDENT(5) having inter-
(or)	
The Court determines that the amount due to	o the RESPONDENT(S) is the sum of
\$ and judgment is given to the RESPO	NDENT(S) for the said amount together
with disbursements in the sum of \$	
(or)	
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Judgment entered in accordance with the above

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

NARCISA LOPEZ

Plaintiff

73 CIV. 4009

-against-

REPLY AFFIDAVIT

HENRY PHIPPS PLAZA SOUTH, INC.

Defendant

STATE OF NEW YORK) COUNTY OF NEW YORK) 85.:

NANCY E. LeBLANC, being duly sworn, deposes and says:

- 1. That I am an attorney, of counsel to GEORGE C.

 STEWART, attorney for the plaintiff herein. That I make this

 affidavit in reply to the affidavit of JOSEPH DELMAN in opposition to Plaintiff's motion for a preliminar injunction.
- That Mr. DELPAN suggests Plaintiff is either barred by laches or by estoppel from obtaining the relief requested herein.
- 3. That I believe both suggestions are incorrect.

 The plaintiff was notified of defendant's unwillingness to renew her lease on January 12, 1973. She requested a hearing on the issue. A hearing was scheduled. It was held on several days.

 A final decision was made by the hearing officer on July 10, 1973.

 A Notice to Terminate the Tenancy, effective August 31, 1973, was served July 16, 1973. This is a notice required by New York

 State law prior to commending a Holdover proceeding in the state court. The state court proceeding to evict was commenced

 September 11, 1973, and a final judgment for the landlord

 Defendant herein, was obtained on September 20, 1973. This action was commended September 19, 1973.
- 4. Open information and belief, there was no "case or controversy" until the hearing officer rendered his decision on July 10, 1973. Further, I believe failure to have participated in the hearing would have constituted failure to "exhaust administrative remedies".

- 5. The within case involves difficult questions of law and was not one which could have been quickly put together. Plaintiff's counsel took approximately two months to gather the facts, analyze the issues involved, prepare the papers and commence the action. Plaintiff's counsel was hampered by the fact that the attorney who had handled the hearing had left their employ and that your deponant was on vacation during the part of the two month period. Given the law and the facts, the question of laches or estoppel seems inappropriately raised.
- 6. Mr. DELMAN also raises the fact that the Plaintiff has paid no rent for her apartment since December, 1972.

 Mr. DELMAN fails to mention that the reason the Plaintiff paid no rent was that the Defendant, apparently on the advise of Mr. DELMAN, refused to accept the rent. The Plaintiff therefore, a recipient of public assistance, returned the rent money to the Department of Social Services (Welfare) which Department took rent off her budget until such time as the Defendant was prepared to accept it. If this court grants Plaintiff's motion for a preliminary injunction, your deponent will undertake to have the back rent paid and the rent as use and occupancy, restored to Plaintiff's budget from Welfare.
- 7. If Plaintiff's motion is denied, Plaintiff can be evicted any time after 72 hours. Once Plaintiff is evicted her case will be effectively mooted and Plaintiff will be denied her day in court on her claim of denial of constitutional rights. She will also be denied possession of the only decent, low-income housing available to her.

Since Plaintiff is prepared to pay use and occupancy to Defendant during the pendency of the case if a preliminary injunction is ordered by the court, Defendant will in no way be injured, even if Defendant should eventually prevail in the case. WHEREFORE, it is respectfully requested that this court grant Plaintiff's motion for a preliminary injunction, together with such other, further and different relief as may be appropriate in the premises.

NANCY E. LOBLANC

Sworn to before me this

4th day of October, 1973.

MARTIN ATWOOD HOTVET. Notery Public, State of New York, No. 31-1656E20 Qualified in New York County Commission Expires Merch 30, 1975

SUMMON

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

MARCISA LOPEZ

Plaintiff'

CIVIL ACTION FILE NO.

-against-

HENRY PHIPPS PLAZA SOUTH, INC.

Defendant

To the above named Defendant: HENRY PHIPPS PLAZA SOUTH, INC.

You are hereby summoned and required to serve upon NANCY E. LeBLANC, Esq.

plaintiff's attorney, whose address is

MPY Legal Services, Inc. 214 East Second Street New York, New York 10009

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

B. Elward.

[Seal of Court]

MOTE: -- This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

FC	OR THE RICT OF NEW YOU	
NAR CISA LOI	PEZ	
	Plaintiff	
-aga	inst-	
HENRY PHIPPS PLAZA	SOUTH, INC.	
	Defendant	
SUMMONS IN	CIVIL ACTION	
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fter service.		

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

MARCISA LOPEZ

Plaintiff

CIVIL ACTION NO.

-against-

HENRY PHIPPS PLAZA SOUTH, INC.

COMPLAINT

Defendant

1

1. Jurisdiction of this Court is invoked pursuant to USC 1343(3) and (4), providing for original jurisdiction of this Court in suits authorized by Title 42 USC 5 1983 to redress the deprivation of rights, privileges, and immun. ties secured by the Fourteenth Amendment to the Constitution of the United States, and 28 USC 5 2201 relating to declaratory judgments.

' II

2. This is an action for a declaratory judgment declaring unconstitutional and illegal defendant's termination of plaintiff's tenancy and refusal to renew her lease, and enjoining defendant Henry Phipps Plaza South, Inc., its agents and all persons in active concert with them from terminating plaintiff's tenancy, refusing to renew her lease, and evicting or threatening to evict plaintiff from her apartment, without affording plaintiff an administrative hearing meeting the constitutional standards of due process and equal protection of the laws-in particular (a) that the hearing be conducted by a hearing officer who is impartial and not an employee of Phipps Houses, (b) that regulations governing refusal to renew leases and the specific grounds therefor be made available to plaintiff prior to any refusal to renew hearing, and (c) that a finding upholding refusal to renew be based only on such evidence as would be sufficient, if plaintiff's lease had not lapsed, to enable defendant to invoke the power of the state courts to evict plaintiff as "objectionable"

and in breach of her lease.

III

- 3. NARCISA LOPEZ is an adult United States citizen and a resident of the City, County, and State of New York, who presently resides in Apt. 8J, 330 East 26th Street, New York, N. Y., in a building owned and operated by defendant Henry Phipps Plaza South, Inc. Residing with her are her three adolescent children, Jose, age 15, Thomas, age 17, and Naida, age 19. Plaintiff is separated from her husband, Thomas, and he is not a resident of the apartment. He has not resided there for over 1-1/2 years. He has come irregularly to see the children.
- 4. Plaintiff was a resident of a building in the Bellevue South Urban Renewal area for 11 years until she was temporarily relocated in 1968 pending the completion of defendant's building. In July of 1970, she moved into her present apartment.

 As a former site tenant, she had a legal right to move into the apartment. She was given a lease for a term of 1 year, October 1, 1970 to September 30, 1971.

IV

- 5. A. Defendant Henry Phipps Plaza South, Inc., is a redevelopment company, organized pursuant to the Redevelopment Companies Law (Article 5 of the Private Housing Finance Law), created to build and operate a housing project in the Bellevue South Urban Renewal Area pursuant to the Urban Renewal Plan therefor, and financed under § 221(d)(3) and § 236 of the National Housing Act, 12 USC § 1701 et seq.
- B. According to records kept in the City Registry for the County of New York, the City of New York acquired the land for defendant's housing project through the City's power of eminent domain, as part of the Bellevue South Urban Renewal Area. The land was sold to defendant on May 27, 1968, and a detailed agreement for the construction and operation of the project, made on April 25, 1968, was made a part of the deed and recorded in

the City Registry. The aforesaid agreement has detailed provisions concerning Conveyance (Article I), Construction (Article II), Equal Opportunity (Article III), and Provisions governing operation of the project, including the tax exemption and maximum rentals (Article IV). Annexed to the agreement and made a part thereof are the Federal and State Capital Grant contracts for the Urban Renewal Area, the Schedule of Relocation Payments, the Bellevue South Urban Renewal Plan, Project and Redevelopment Plans for defendant's project, and a construction schedule for defendant's project. The Agreement was approved by the City Board of Estimate on April 25, 1968, after the City Planning Commission had approved the proposed plans on January 31, 1968. In particular the agreement required defendant to construct his project in accordance with the approved plans. The agreement also provides for a 25 year tax exemption from real estat; taxes, other than assessments from local improvements on all of the value of the property in excess of its assessed value at the time of acquisition by the City.

- C. The Redevelopment Companies Law provides for extensive supervision by New York City's Housing and Development Administration of the organization, planning, development, maintenance, and operation of Redevelopment Companies such as defendant. (Sections 102(2), 104, 109, 111, 112, 113, 114, 115, 117, 118, 120 and 122).
- D. The Certificate of Incorporation, Par. 2, states that the Company's purposes shall be "to provide housing for low and moderate income families" and "to acquire one or more areas in the Bellevue South vicinity, under a plan or plans, and to construct, own, maintain, operate, sell and convey projects pursuant to the terms and provisions of the Redevelopment Companies Law". The Certificate, Par. 12, authorizes New York City's Housing and Development Administration (the Supervising Agency, as defined in \$ 102(2) of the Redevelopment Companies Law) to remove any director or directors from office "in the event the

company fails to comply with the requirements of the said Administration. The Certificate requires the approval of the Housing and Development Administration for the process of issuing income debentures, Par. 13, and for borrowing funds, Par. 14.

The Certificate, Par. 17, states that the "company has been formed to serve a public purpose. It shall be and remain subject to the supervision and control of the Supervising Agency except as otherwise provided by the Redevelopment Companies Law, so long as said law remains applicable to any project of the company. All real and personal property acquired by the Company and all structures erected by it shall be deemed to be acquired or created for the promotion of the purposes of said law." A certified copy of the Certificate is annexed hereto as Exhibit 1.

E. Upon information and belief, defendant company is wholly owned by Phipps Houses, a corporation chartered by the State of New York in 1905 and has as its purpose the provision of tenement or other housing accommodations for the working classes. Upon information and belief, Phipps Houses owns and controls several other companies in the City of New York maintaining and operating housing projects, including Lambert Houses in the Bronx, New York.

v

6. On January 12, 1973, plaintiff received a notice from defendant that her lease for Apt. 8J, 330 East 26th Street, New York, N. Y., would not be renewed. The notice specified 13 "reasons" why said renewal was being denied. The notice further stated that plaintiff was entitled to a hearing on the charges and that, if the decision not to renew was affirmed after the hearing, summary proceedings would be begun to remove her from her apartment. The notice made no reference to any regulations of defendant setting forth the grounds upon which a termination decision might be based. Upon information and belief, a letter was sent to plaintiff on April 16, 1973, containing 3 additional charges.

- 7. The hearing, made up of three sessions, was held on Pebruary 27, March 6, and May 2, 1973, at the management offices of defendant. On July 10, 1973, a decision was rendered. Six of the charges were sustained and the defendant's decision not to renew the plaintiff's lease was upheld. Thereafter on July 16, 1973, a "30-day" notice of termination was served on plaintiff. On September 11, 1973, summary proceedings, which are pending, were begun against plaintiff. The only issue that will be before the New York Courts in the summary proceeding will be whether the defendant, Henry Phipps Plaza South, Inc., terminated the plaintiff's lease and gave her notification of the termination. Under settled decisions of the New York courts, the plaintiff may not challenge the basis of the defendant's action or complain of the failure of defendant to accord plaintiff a proper hearing meeting constitutional standards.
- 8. The hearing officer was Mr. John Codman. Upon information and belief, at all times pertinent herein, Mr. Codman was employed as the Property Manager of Lambert Houses, P.O.Box 3, Westfarms Station, The Bronx, New York, which project is owned, controlled, and operated by Phipps Houses, Inc., or a corporation owned and controlled by Phipps Houses, Inc. At the hearing on February 27, 1973, plaintiff's attorney, Ms. Lisa Blitman, objected to Mr. Codman, on the grounds that he was a manager of a Phipps Houses' project and therefore not impartial. Moreover, at the outset of the hearing, before any evidence had been put in, Mr. Codman stated he believed the charges justified termination.
- 9. At no time, before, during or after the hearing, did defendant give notice to plaintiff of any rules or regulations promulgated by defendant, governing refusal to renew leases and setting forth the specific grounds upon which a refusal decision might be made. Moreover, the decision of the hearing officer makes no reference to any such regulations. Upon information and belief, no such regulations exist.

10. In his decision after the hearing, the hearing officer sustained 6 charges as "all serious, substantial, and warrant(ing) a finding that the continued occupancy of the tenant at the subject premises would constitute a real danger to the health, safety, and well-being of the other occupants of the development. " Upon information and belief, Charges 2 (of April 16) and 3 (of January 12) relate to Thomas Lopez, Senior. Charges against him may not now be used as a basis for the eviction of plaintiff, since she is separated from Mr. Lopez and he no longer resides in the apartment. Plaintiff has no control over his actions. Upon information and belief, Charges 12 and 13 relate to conduct of Thomas Lopez, Junior, outside the building, which affected none of the other tenants of the building. Upon information and belief with respect to Charge 10,/proof showed only that the police received a complaint and that when they arrived at the premises, the "condition" was "corrected". There was no evidence of any actual disorderly conduct by anyone in plaintiff's apartment. Moreover, the charge is neither serious nor substantial. Finally, upon information and belief, with respect to Charge 8, no actual transgression against the property or quiet enjoyment of anyone in the building was shown. This charge is neither serious nor substantial. Upon information and belief, no serious or substantial evidence has been advanced against plaintiff or her sons which would constitute them "objectionable" so as to enable defendant to invoke summary proceedings to forfeit her lease, if plaintiff's lease had not lapsed. It is only because plaintiff's lease has lapsed that defendant will be able successfully to invoke the summary procedures of the state courts to evict plaintiff. Under the law of New York, if plaintiff's lease had not lapsed, defendant would not be able to obtain a judgment of eviction against plaintiff in the state courts.

11. Defendant's refusal to renew plaintiff's leave and the termination of her tenancy deprive plaintiff of due process of law, in contravention of the Fourteenth Amendment of the United States Constitution, in that the hearing accorded plaintiff did not meet due process standards, insofar as:

- A. The hearing officer, John Codman, was project manager of Phipps Houser, and biased against plaintiff.
- B. At no time before or during the hearing did defendant give notice to plaintiff of any rules or regulations of defendant governing refusal to renew leases and setting forth specific grounds therefor, and in fact no such rules and regulations exist.
- 12. Defendant's refusal to renew plaintiff's lease and the termination of her tenancy and defendant's use of the state court to evict plaintiff deprive plaintiff of equal protection of the laws in that the charges against plaintiff would not constitute sufficient evidence, if plaintiff's lease had not lapsed, for a state court to declare plaintiff's lease breached on the grounds of "objectionable behavior" if defendant were proceeding against plaintiff in state court.
- 13. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for declaratory judgment and for an injunction is her only means of securing adequate relief. Plaintiff will suffer irreparable injury unless relief is provided by this Court, in that defendant will invoke the powers of the state courts to evict her.

WHEREFORE, plaintiff respectfully prays that this Court enter judgment for plaintiff as follows:

1. Declare defendant Henry Phipps Plaza South, Inc.'s refusal to renew plaintiff's lease and the termination of her tenancy unconstitutional and illegal until such time as plaintiff is granted a hearing meeting constitutional standards; in particular, that the hearing be conducted by an officer, who is not an employee of Phipps Houses, or any of the companies it controls, and is impartial, that regulations governing refusal to renew leases and the specific grounds therefor, be made available to

plaintiff prior to any termination hearing, and that a finding after hearing upholding termination be based only on such evidence as a state court would reply upon to find plaintiff "objectionable", if her lease had not lapsed.

- 2. Permanently enjoining defendant Henry Phipps Plaza South, Inc., or any of its agents, from terminating plaintiff's tenancy and refusing to renew plaintiff's lease, and evicting or threatening to evict plaintiff, until such time as plaintiff is granted a hearing meeting constitutional standards as aforesaid.
- 3. For such other and further relief as to the Court seems just in the premises.

NANCY E. LeBLANC, Esq.
MARTIN ATWOOD HOTVET, of Counsel
MFY Legal Services, Inc.
Attorneys for Plaintiff
214 East 2nd Street
New York, N. Y. 10009
777-5250

Dated: New York, N. Y. September 18, 1973 STATE OF NEW YORK) COUNTY OF NEW YORK) 58.:

The undersigned, being duly sworn, deposes and says that she is the plaintiff in the within action; that she has read the foregoing complaint and knows the contents thereof and the same is true to her own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, she believes it to be true.

NARCISA LOPEZ

Sworn to before me this 18th day of Captember, 1973.

Angun T Motary Public

AUGUSTINE PERMUY
Notary Public, State of New York
No. 31-63:29715
Quantied in New York County
Commission expires March 26, 1971

WHITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

MARCISA LOPEZ,

Plaintiff,

Civil Action No. 73CIV4009

-against-

HERRY PHIPPS PLAZA SOUTH, INC.,

VERIFIED ANSWER

Defendant.

1

peragraph 1 of the complaint and alleges that the Court has no jurisdiction since no State action is involved; that the plaintiff is not entitled to due process or if she is so entitled it has been afforded to her; and that the plaintiff has failed to exercise the rights and remedies available to her in the Courts of the State of New Yest for a review of the determination here being attacked.

II

2. Defendant denies that there is any basis in lev or in fact for the relief sought by the plaintiff in paragraph 2 of the complaint.

III

3. Defendant denies the allegations of paragraph 3 of the complaint that the plaintiff is separated from her husband, THOMAS, that he is not a resident of the apartment and has not resided there for over one and one-half years and alleges affirmatively that police records state on March 20, 1972 THOMAS LOPEZ, SR. was present in the public lobby of the building; on July 8, 1972 THOMAS LOPEZ was present in the apartment of the plaintiff; and on March 24, 1973 THOMAS LOPEZ was present in the apartment of the plaintiff; and on March 24, 1973 THOMAS LOPEZ was present in the public lobby of the building. Defendant admits the residning

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allegations of paragraph 3 of the complaint and admits the allegations of paragraph 4 of the complaint.

IV

4. Defendant admits the allegations of paragraphs 5A, B, C, D and E of the complaint.

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- 5. Defendant admits the allegations of paragraphs 6 and 7 of the complaint and admits the allegations of paragraph 8 of the complaint except the last sentence thereof which defendant denies.
- 6. Defendant denies the allegations of paragraph 9 of the complaint that no notice of specific grounds of the refusal to renew the tenants' lease was furnished to the plaintiff and admits the remaining allegations of paragraph 9 of the complaint.
- .7. Defendant admits that the hearing officer sustained six charges in his decision as serious, substantial and warranting a finding that the continued occupancy of the tenants at the subject premises would constitute a real danger to the health, safety and well being of the other occupants of the development and, except as admitted, denies all of the remaining allegations of paragraph 10 of the complaint.
- 8. Defendant admits that at no time did the defendant give notice to the plaintiff of rules or regulations covering refusal to renew leases and the fact that no such rules and regulations exist and, except asadmitted, denies all of the remaining allegations of paragraph 11 of the complaint.
- 9. Defendant denies all of the allegations of paragraphs 12 and 13 of the complaint except admits that the

defendant has and will invoke State Court action to evict the tenants.

VI

FIRST DEFENSE

10. The complaint fails to state a claim against defendant upon which relief can be granted.

VII

SECOND DEFENSE

11. Plaintiff's laches in commencing this action and estoppel by participation in the hearings complained of prevent the grant of relief to the plaintiff in this action.

VIII

THIRD DEPENSE

12. The Court has no jurisdiction of this action since no State action is involved; there is no property right of the plaintiff to which the constitutional protections of due process apply; and the plaintiff had available at the time of the commencement of this action and still has available adequate relief by means of a proceeding in the Supreme Court of the State of New York to review the decision of the hearing officer under the provisions of Article 78 CPIR.

WHEREFORE defendant demands judgment dismissing the complaint in this action together with costs and disbursements.

Dated; New York, N.Y. September 27, 1973

WHITTHORN & DELMAN Attorneys for Defendant 355 Lexington Avenue New York, U. Y. 10017 (212) 661-1166

VS. HENRY PHIPPS PLAZA SOUTH, INC.

NARCISA LOPEZ

THE COURT: This is a motion for a preliminary injunction by plaintiff Narcisa Lopez vs. Henry Phipps Plaza South, Inc.

The case was assigned to Judge Cannella, but because of his illness, the preliminary injunction comes to be as the Part I judge.

We have had two hearings at which the facts have been canvassed rather thoroughly. In addition, both parties have submitted substantial factual material, legal authorities, affidavits and memoranda.

Much of my views on the subject have been stated during the course of the argument. For present purposes I am simply going to make a brief summary which will constitute my findings of fact and conclusions of law.

The plaintiff resides in Apartment 8-J, 330 East 26th Street, New York, N. Y., in a building owned and operated by defendant Henry Phipps Plaza South, Inc.

It appears that prior to the completion of this apartment building the plaintiff resided in rent-controlled housing in the same location which was demolished in order to make room for the new apartment building in which she

presently resides. She has lived in her present apartment since 1970.

The record shows that plaintiff and her husband,
Thomas Lopez, entered into a lease with defendant as of
October 1, 1970. Under the terms of that lease, it was to
expire September 30, 1971.

The lease provides in paragraph 9, labeled "Rules and Regulations" as follows:

"That tenant's family, guests, servants, employees, agents, licensees and visitors shall at all times conduct themselves in and about the demised premises in the development in a manner which shall be free from annoyance to other tenants in the same or neighboring building or elsewhere in the development to the end that other tenants in the same or neighboring building or in the development shall enjoy the occupancy and use of their premises and their rights and privileges as tenants with reasonable comfort, convenience and safety."

The relevance of that provision will appear shortly.

Although the documents have not been presented, it was agreed that this lease was renewed on one or more occasions, the last renewal expiring December 31, 1972.

On January 12, 1973, defendant sent a letter to Thomas Lopez and plaintiff, Narcisa Lopez, advising them that defendant had decided not to renew the lease for the apartment. The letter listed thirteen incidents involving the husband, Thomas Lopez, Sr., and one or both of the sons of the Lopezes. Such incidents involved alleged vandalism, drunkenness, burglary and so forth

The letter advised Mr. and Mrs. Lopez of their right to have a hearing on these thirteen allegations.

The record shows that the Lopezes have three children, a daughter Naida, presently nineteen; a son Thomas, Jr., presently seventeen; and a son Jose, presently fifteen.

Hearings were held before one John Codman, manager of Lambert Houses in the Bronx, New York, who was designated as hearing officer. Lambert Houses appear to be another development in the Bronx owned by the same company which owns and operates the Henry Phipps Plaza South.

The first hearing was convened on February 27, 1973, but was adjourned at the request of the attorneys for the tenant in order to afford time for preparation and the obtaining of an interpreter. Plaintiff, Narcisa Lopez, does not speak English; she speaks Spanish.

A hearing was held on March 6, 1973 at which

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 extensive testimony was taken by various persons with respect to the thirteen incidents charged in the letter sent to the Lopezes.

Both Mr. Lopez and plaintiff, Narcisa Lopez, as well as Thomas Lopez, Jr., were present, as was the attorney for the Lopezes.

An additional letter of charges was sent to the Lopezes on April 16, 1973, detailing additional incidents occurring March 17, 1973 and March 23, 1973.

A further hearing was held by Mr. Codman on March 2, 1973.

Mr. Codman rendered a decision on July 10, 1973, which in my view shows a careful and objective analysis of the facts and which concludes that certain of the charges were proved, and that the charges which were proved showed that continued occupancy of the apartment by Mr. and Mrs. Lopez and the family would be detrimental to the health, safety and well-being of the other occupants of the development, and that these proven charges furnished substantial grounds for the refusal by the landlord to renew the tenant's lease.

If I was hearing this matter on or about July 10, 1973, I have some serious doubt as to whether I would grant the plaintiff any relief. However, it is now October 4,

1973, and there is reason to believe that a re-examination of the facts by Mr. Codman or some other designated hearing officer should be made.

In the first place, counsel for plaintiff represents strongly that Thomas Lopez, the hushand, is in fact separated from plaintiff, Narcisa Lopez. Counsel states that due to the drunkenness and the violent nature of Thomas Lopez there is no desire on the part of Narcisa Lopez to live with her husband further, at least for the present. She states that the separation is a sincere one and very much desired and needed by Narcisa Lopez.

counsel for plaintiff states that she has personally seen Thomas Lopez and demanded that ne not return to the apartment of his wife or to the premises..

It appears that efforts are being made by plaintiff, Narcisa Lopez, and her attorney to effectively keep Thomas Lopez away from the premises. There is an obvious problem in this. It appears that in March of this year Thomas Lopez was at the building in a drunken condition and threatened the guard at the building with a knife.

However, this action is not being brought by or on behalf of Thomas Lopez. As far as this Court is concerned the leasehold or rental interests of Thomas Lopez expired on the December 31, 1972 date, and as far

as this Court is concerned Thomas Lopez has no further interests whatever and no right to occupancy in that apartment or in that building. No relief is being ranted to Thomas Lopez, and as far as this Court is concerned the landlord takes whatever steps are necessary to prevent Thomas Lopez from being on the premises.

The other charges on which Mr. Codman based his conclusions related to the activities of the two sons, Thomas, Jr., and Jose. However, it appears from the record that the last specific charge or allegation of misconduct against those boys relates to an incident occurring December 19, 1972.

There is no doubt as to the seriousness of this incident. A patrolman testified before Mr. Codman that he personally observed Thomas Lopez, Jr., and Jose Lopez at 3:25 a.m. in a book store, which was part of this building, on December 19, 1972. The facts clearly indicate that the boys had no business being in the book store at 3:25 a.m. Further, that Thomas Lopez, Jr., had a gun which he pointed at the patrolman, and that the patrolman then shot Thomas.

Both Thomas and Jose were scurrying about the premises in the most suspicious manner.

The problem with basing an eviction on that incident and prior incident is that the circumstances may

well have changed substantially since December 19, 1972 with respect to both of the two boys..

Counsel for Mrs. Lopez has represented to me that in the course of this incident Thomas Lopez, Jr., was shot; that one of his testicles was shot off and that his stomach was badly torn up.

Counsel has represented that the boy had a substantial period of hospitalization and that he has been withdrawn and may well have been very much removed from mischievous activity since that serious wound.

Thomas Lopez, Jr., is presently under indictment in Supreme Court, New York County, for burglary and is out on bail. His trial is presently scheduled for later this fall. Exactly what will happen from that trial we of course do not know.

It further appears that Jose Lopez went voluntarily to a state camp in connection with a juvenile delinquency charge following the December 1972 incident.

He is back home now, but again the incident may have altered to a substantial degree the conduct of Jose.

In any event, the defendant has not directed y attention to any specific incidents of misconduct alged against either Thomas, Jr., or Jose since December
1, 1972.

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It further appears from statements by plaintiff's counsel that efforts are being made to accomplish some reform and rehabilitation in the household of Mrs. Lopez.

I am advised that a social worker named Jose Nazario, employed by MFY Legal Services, will be assigned to the Lopez household for counseling with the children and for other work.

In conclusion, I have decided to grant a preliminary injunction against any further effort to evict
plaintiff, Narcisa Lopez. This preliminary injunction
will be in effect for a period of forty-five days. During
this time Mr. Codman or any other qualified hearing examiner
appointed by defendant will have the opportunity to conduct
a new hearing to take evidence regarding the situation obtaining in the building and with respect to the Lopez household during recent months and currently.

As I have advised plaintiff's counsel, plaintiff and her family are to give full cooperation at such hearing.

It was brought out during our discussion that
the rent on the Lopez apartment was seriously in arrears.

It appears that the rent is in fact provided by Welfare
payments. I cannot permit these serious arrears to continue. The continuation of my preliminary injunction for

As to certain legal points raised by the parties, I wish to state the following:

Defendant argues that plaintiff is required to exhaust state remedies, specifically an Article 78 proceeding in New York Supreme Court. In my view, the case of Monroe v. Pape, 365 U.S. 167 holds that such exhaustion is not required.

Defendant further argues that there is no property rights involved sufficient to invoke the Pourteenth Amendment. The question is somewhat in doubt but in my mind there is a sufficient indication of a property right for me to grant preliminary injunctive relief. I refer to the case, which I believe is somewhat analagous, of Escalera v. New York City Housing Authority, 425 F. 2d 853.

As to the elements of due process, they are well outlined in Goldberg v. Kelly, 397 U. S. 254.

In my view, the only additional due process requirement which I feel should be imposed is the requirement that before an eviction at the current time the landlord of this development should inquire through the hearing

process previously employed as to the current situation existing with respect to plaintiff Lopez and her children.

I think that the plaintiff should submit an order on notice no later than tomorrow morning. The defendant will have until Monday morning to submit a counter order and I will sign an order on Tuesday. In any event, I certainly understand that in view of the decision, there will be no eviction proceeding taking place over the weekend.

MR. DELMAN: If your Honor please, there was one error made on your Honor's part in the decision. May I suggest that it be corrected? You stated that the further hearing before Mr. Codman was held on March 2, 1973; the correct date was May 2, 1973.

THE COURT: That correction will be made.

MR. DELMAN: There was just one other, if your Honor please, that should be corrected. You stated that Mr. Thomas Lopez, Jr., was indicted for burglary. My recollection of Miss Le Blanc's statement was that he was indicted for burglary and possession of a dangerous weapon.

MISS LE BLANC: Burglary 2 and possession of a dangerous weapon.

THE COURT: That will be deemed corrected.

MISS LE BLANC: May I ask your Honor what will

happen at the end of forty-five days? Do we come back to you?

THE COURT: You better figure that out.

MISS LE BLANC: I realize that it was originally assigned to Judge Cannella --

THE COURT: I've got a grand jury coming in.

MISS LE BLANC: -- but given your involvement with this matter up to this time, I would think if we were to come back to your Honor at the end of forty-five days it would be desirable.

THE COURT: All right.

ORDER AND PRELIMINARY INJUNCTION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

FIGH 10/11/75

MARCISA LOPEZ

Plaintiff

CIVIL ACTION NO. 73 CIV. 4009

-against-

MEMRY PHIPPS PLAZA SOUTH, INC.

ORDER AND PRELIMINARY INJUNCTION

Defendant

Plaintiff having moved for a preliminary injunction pursuant to Rule 65 of the Pederal Rules of Civil Procedure enjoining defendant HENRY PHIPPS PLAZA SOUTH, INC., and its agents, and all persons in active concert with it, from evicting or threatening to evict plaintiff from her apartment, Apt. 8J, 330 East 26th Street, New York, New York, and enjoining defendant from further prosecuting summary proceedings in state court initiated to effect plaintiff's eviction, until the issues raised by the within action are finally determined, and this motion having been brought on by order to show cause signed on September 20, 1973, and the court having considered the verified complaint, and the answer thereto, the affidavits submitted in support of said motion and in opposition thereto, and all the other papers submitted herein, and having heard NANCY E. LeBLANC, Esq., for the motion and JOSEPH DELMAN, Esq., in opposition thereto on October 2 and 4, 1973, and the court having made its opinion containing findings of fact and conclusions of law, and it appearing to the court after due deliberation that otherwise plaintiff will suffer immediate and irreparable loss, injury, and damage, 1t 10

ORDERED that defendant HENRY PHIPPS PLAZA SOUTH, INC., its agents, sorvants, employees, and attorneys and all persons in active concert with it, be and they hereby are restrained and enjoined for 45 days from the date of this order, from evicting to the chief NARCISA LOPES and her three

TPL

children, Thomas Jr., Jose, and Naida, from their home in Apt. 8J, 330 East 26th Street, New York, New York, and it is

FURTHER ORDERED that this injunction shall not extend to or protect Thomas Lopez, Senior, the husband of the plaintiff, MARCISA LOPEZ, and it is

FURTHER ORDERED that this preliminary injunction shall automatically cease and lapse fifteen days from the date of this unless all back rentals order/and/or use and occupancy payments due and owing plaintiff for defendant by the Department of Social Services of the City of New York, to wit, 1795.3 for the months of December 1972, through October 15, 1973, are paid to defendant, and the Department of Social Services of the City of New York is hereby requested to make such payment, and it is

FURTHER ORDERED, that during the pendency of this injunction plaintiff shall make use and occupancy payments of FIGO per month, and it is

FURTHER ORDERED that defend at shall have the opportunity to and is urged to hold another hearing before John Codman or any other qualified hearing examiner appointed by defendant for the purpose of determining whether current and competent evidence exists upon which to base the refusal to renew plaintiff's lease, in accordance with the standards established by Par. 9 of the lease between plaintiff and defendant. Plaintiff shall fully cooperate with defendant if such a hearing is held. If such a hearing is held, the decision and findings of fact on which it is best shall be submitted to this court within 10 days after it is sectioned, and It is

FURTHER ORDERED that no security shall be given by plaintiff, excepting that plaintiff shall make use and occupancy payments to defendant as aforesaid.

October 9, 1973

Thomas 9 (viess)
UNITED STATES DISTRICT JUDGE

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ORDER TO SHOW CAUGE TO EXTEND INJUNCTION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

NARCISA LOPEZ

Plaintiff

CIVIL ACTION NO. 73 CIV. 4009

-against-

ORDER TO SHOW CAUSE FOR EXTENSION OF PRELIMINARY INJUNCTION

BENRY PHIPPS PLAZA SOUTH, INC.

Defendant.

Upon the complaint and all the papers previously filed herein on the request for a Preliminary Injunction and the affidavits of NANCY E. LeBLANC, Esq., and JOSE NAZARIO, attached hereto, 1t 1s

ORDERED that the defendant or its attorney show cause at a motion term of this court to be held in Room 706 in the United States Courthouse, Poley Square, New York, Now York, on the 29thday of November, 1973, at 1:00 p.m. or as soon thereafter as counsel may be heard, why plaintiffs herein should not be granted the following relief:

1. An order extending the 45 day preliminary injunction granted October 9, 1973, by Judge THOMAS P. GREISA, which injunction enjoined the defendant, HENRY PHIPPS PLAZA SOUTH, INC., its agents, servants, employees and attorneys and all persons in active concert with it, from taking any steps to evict plaintiff NARCISA LOPES and her three children, Thomas, Jr., Jose and Naida, from their home in Apt. 8-J, 330 East 26th Street, New York, New York; said extension of the preliminary injunction to continue until there has been a trial on the merits and a decision thereon in the within case, or until the matter is otherwise settled and resolved, and

IT IS FURTHER ORDERED that pending the determination of this motion the preliminary injunction granted in the order of October 9, 1973, shall continue in full force and effect, and

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on the defendant HENRY PHIPPS PLAZA SOUTH, INC., at its office at 2 Penn Plaza, New York, New York, on or before the 23rdday of Movember, 1973, at or before 4 f.m.. Service may be made by the attorneys for plaintiff.

At the United States Courthouse Foley Square New York, New York On this 23rd day of November, 1973.

U. S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF HEW YORK

MARCISA LOPEZ

Plaintiff

CIVIL ACTION NO. 73 CIV. 4009

-against-

BENRY PRIPPS PLAZA SOUTH, INC.

AFFIDAVIT IN SUPPORT OF BEQUEST FOR EXTENSION OF 45 DAY PRELIMINARY INJUNCTION

Defendent.

STATE OF NEW YORK) SS. :

MANCY E. LeBLANC, being duly sworn, depones and says:

- 1. That I am an attorney, of Counsel to GEORGE C.

 STEWART, Esq., attorney for plaintiff herein. That I make this

 effidavit in support of plaintiff's request for an order continuing
 on the same terms and conditions the 45 day preliminary injunction
 granted by Judge THOMAS P. GREISA on October 9, 1973, said continuation to be through a final determination of this matter either
 by trial or by other resolution or settlement of the matter.
- 2. That pursuant to the order of October 9, 1973, plaintiff's counsel, after tremendous effort, was able to obtain from the Department of Social Services the back rents of \$1,775.31, and the same was paid to the defendant's manager, Nrs. Fehrenbach, at Phipps House on October 24, 1973, together with current rent. That rent of \$180.81 per month was restored to plaintiff's budget and upon information and boliof, has been paid regularly to defendant by plaintiff as use and occupancy.
- 3. That pursuant to the order of October 9, 1973, plaintiff has been ready and willing to cooperate with defendant in the event defendant scheduled another hearing. That no such hearing has been scheduled.
- 4. That plaintiff's counsel waited as long as possible to bring on this motion to extend the 45 day preliminary injunction in order to give defendant ample opportunity to schedule such a hearing.

- 5. That the facts as outlined in the hearing before
 Judge THOMAS P. GREISA on October 2 and 4, 1973, remain essentially the same, in that to your deponent's knowledge, no further
 incidents of misbehavior on the part of the Lopes family have
 cocurred.
- 6. However, as promised by your deponent during the hearing on October 4, 1973, a social worker, Jose Nazario, from MPY Legal Sorvices, Inc., was assigned to work with the Lopez family and in particular, Jose. An affidavit is attached hereto from Jose Nazario, setting forth in more detail, the contact he has had and work he has done with the family. Mr. Nazario continues now, and will continue, to work with the family on a regular basis.
- 7. That the Lopez family is, and has been making a major effort to conform to the rules and regulations of the defendant Phipps Houses.
- 8. That irreparable injury will occur to the Lopez family if at this time the 45 day preliminary injunction is not continued, in that plaintiff will be evicted before she can have a trial on the merits and issues raised in her case.
- 9. That, upon information and belief, the defendant is neither prejudiced nor harmed by granting plaintiff's request for an extension of the 45 day preliminary injunction, since plaintiff is paying use and occupancy, and there are no current or recent incidents violating the standards established by paragraph 9 of the lease between plaintiff and defendant.
- : 10. That plaintiff is prepared to proceed expeditiously to a trial on the merits.

: 11. No prior application has been made for the relief requested horoin.

WHEREFORE, it is respectfully requested that this court grant plaintiff's motion for an extension through the trial on the merits, or settlement or other resalution of the case, of the 45 day preliminary injunction granted October 9, 1973, on the same terms and conditions set forth in that order, together with such other, further and different relief as may be appropriate in the premiscs.

45 HANCY E. LEBLANC

Sworn to before me this 21st day of November, 1973.

Notary Public

MARTIM ATWOOD NOT POLY February February State of the Total Total

MARTIN ATWOOD HOTVEY Notary Public, State of New York No. 31-1866820 Qualified in New York County Commission Expires Merch 30, 1978

AFFIDAVIT OF JOSE NAZARIO

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

MARCISA LOPES

Plaintiff

CIVIL ACTION NO. 73 CIV. 4009

-against-

AFFIDAVIT

HENRY PHIPPS PLAZA SOUTH, INC.

Defendant

STATE OF NEW YORK) SE.:

JOSE NAZARIO being duly sworn, deposes and says that:

- 1. I am employed as Social Worker in the MFY Logal Services, Inc., 214 East 2nd Street, New York, N. Y. 10009.
- 2. I have been actively providing social work services to Marcisa Lopez, and her two children Thomas Lopez Jr., and Jose Lopez.
- 3. The Lopes family reside at 330 East 26th Street, Apt. 8-J, New York, N. Y.
- 4. That I see the goal of my function as a social worker in this case as three-fold: a) To help the family function without having members come into conflict with the law; b) To help the family romain together in the community; and c) Provide family with necessary counseling services to better their lives.
- 5. That this is an intact family who is willing to accept help, advice and has cooperated with me in all matters.

 Mrs. Lopez cares very much for her children and is concerned about their well-being and education.
- 6. That I have been working together with Mr. Stan Schrebman, Counselor at Phoenix School for boys located at 333 will West 86th Street, so that Jose Lopes/be accepted to their educational program.
- 7. On November 5, 1973, a meeting was held at Fhoenix School with Mr. Stan Schrebman, Mrs. Narcisa Lopez and Jose Lopez for initial school acceptance interview. Subsequent tests prior to admission to the school are now being scheduled.

- family on the average of once a week to provide Thomas, Jr. and Jose with counseling services. Mrs. Lopes apartment is kept clean, neat and adequately furnished. I discussed with Thomas, Jr. his medical condition and the possible acceptance to a job training program once he is physically able to work.
- 9. I have arranged for Thomas, Jr., medical appointments at Bellevuc Hospital so that he can receive further medical treatment for his past injuries.
- I will continue to provide counseling and concrete services to the Lopez family.

JOSE NAZARIO

Sworn to before me this

19 day of November, 1973.

76

AFFIDAVIT IN OPPOSITION OF JOSEPH DELMAN

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

MARCISA LOPEZ.

Civil Action No. 73Civ 4009

Plaintiff

AFFIDAVIT IN OPPOSITION

-Against-RENRY PHIPPS PLAZA SOUTH, INC.,

Defendant.

STATE OF NEW YORK COUNTY OF NEW YORK

JOSEPH DELMAN, being duly sworn, deposes and says:

I am a member of the firm of Whitehorn & Delman, attorneys
for the defendant, and make this affidavit in opposition to the
plaintiff's motion for continuance of a prior interim preliminary
injunction.

I am fully and personally familiar with the facts and circumstances and have handled the hearings and proceedings in this matter from their inception.

procedures of this Court, this motion is to be heard and determined either by Judge Cannella to whom this action was assigned or, if he be not available, by the judge presiding at the motion part of this Court. It is expected that plaintiff will argue that this motion be heard by Judge Griesa, who heard and determined plaintiff's motion for a preliminary injunction, upon the ground that he is familiar with the matter. Deponent respectfully submits that Judge Duffy of this Court, who denied plaintiff's original request for a temporary restraining order is just as familiar with this matter as Judge Griesa. A determination by

Judge Griesa in violation of the rules of this Court would be elearly improper.

The attorneys for the defendant heretofore submitted to the Court rather lengthy affidavits and exhibits detailing the facts in connection with this action and a memorandum containing defendant's legal arguments in opposition to the motion. There would seem no point in encumbering the record by repeating the same matters on this motion and the Court is respectfully referred thereto. It will be the function of this affidavit to supplement the papers previously submitted.

The action brought by one of the two tenants on a lease for a residential apartment in a development owned by the defendant alleges that the plaintiff was deprived of due process in the refusal by defendant to renew the lease for the apartment on three grounds, as follows:

- 1. The plaintiff was not made aware of rules and regulations of the defendant proscribing the improper conduct charged.
- 2. The hearing officer was biased and prejudiced against the plaintiff.
- 3. The evidence to sustain the charges was insufficient.

The decision of the Court on plaintiff's motion for a preliminary injunction found against the plaintiff on each and every one of these grounds. As to ground number 1, the Court found that the improper conduct charged was clearly proscribed by paragraph 9 of the lease labeled "Rules and Regulations" which requires a standard of conduct which will permit other tenants in the same or neighboring building to enjoy their rights and privileges "with reasonable comfort, convenience and safety." (Decision of Judge Griesa, page 67 of the record)

As to the contention that the hearing officer was biased

and prejudiced against the plaintiff, the Court in its decision (Decision of Judge Griesa, page 73 of the record) and in its order made October 9, 1973, which order was prepared and submitted by the plaintiff, granted the defendant the opportunity of holding a further hearing before the very same hearing officer "or any other qualified hearing examiner". (Emphasis added)

As to the contention that the charges were not supported by the evidence, the Court stated as follows:

"Mr. Codman rendered a decision on July 10, 1973, which in my view shows a careful and objective analysis of the facts and which concludes that certain of the charges were proved, and that the charges which were proved showed that continued occupancy of the apartment by Mr. and Mrs. Lopez and the family would be detrinental to the health, safety and well-being of the other occupants of the development, and that these proven charges furnished substantial grounds for the refusal by the landlord to renew the tenant's lease." (Decision of Judge Griesa, page 69 of the record)

Maring come to the conclusion as, in fact, the record mandates, that there is no basis whatsoever for the plaintiff's allegations of deprivation of due process, one may well wonder why the plaintiff's motion for a preliminary injunction was granted. The rationale of the Court was, first, that the acts charged to one of the tenants, Thomas Lopes, the husband of the plaintiff, who is not a party to the action, could be disregarded on the basis of plaintiff's contention that she was no longer living with him. The second ground was the Court's determination that despite the holding of hearings on Pebruary 27, 1973, March 6, 1973 and May 2, 1973, a further hearing on the issue of rehabilitation of the two sons of the plaintiff was required in order to afford the plaintiff due process. The Court stated:

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"In my view, the only additional due process requirement which I feel should be imposed is the requirement that before an eviction at the current time the landlord of this development should inquire through the hearing process previously employed as to the current situation existing with respect to plaintiff Lopes and her children." (Decision of Judge Griesa, pages 74 and 75 of the record)

Defendant has not and will not hold any further hearing. The last hearing was held May 2, 1973 and the decision of the hearing examiner was rendered on July 10, 1973. A 30-day notice terminating tenancy, as required by law, was served on the tenants on July 17, 1973, within one week after the decision, ending the tenancy on August 31, 1973, the earliest date upon which it could be ended. Holdover summary proceedings for the eviction of the tenants were commenced by petition dated September 6, 1973. The tenants answered and trial was set for September 20, 1973 at which time, defendant was awarded a final judgment of possession by the Civil Court. New York County. The Order to Show Cause by which the initial motion was made, dated September 19, 1973, the day before the trial, although the plaintiff could have sought relief from this Court as early as January, 1973 when she first received notice that her lease would not be renewed.

To find, under these circumstances, that a further hearing is required to afford due process is, in effect, to prevent the defendant from making and enforcing a determination not to renew a lease however well grounded. The Court has taken to itself the performance of real estate management functions. The function of the Court, if it has any jurisdiction whatever, and this contention is made in the memorandum submitted by the defendant on the initial motion, is limited to determining whether the traditional requirements of notice, hearing, confrontation,

counsel, cross-examination and evidence have been afforded. All were afforded to the plaintiff. It is the function of defendant and not of the Court to then determine whether or not the lease should be renewed.

Similarly, it is not the function of the Court to determine that the acts of one of the tenants should be divorced from consideration because he is not a party to the action and plaintiff claims not to be responsible for his acts.

Continuance of the injunction should be denied in all respects.

Sworn to before me this 27th day of November, 1973

JOSEPH DELMAN

CARMEN AVIRANDA
HOTARY PUBLIC, STATE OF NEW YORK
No. 24-451143G
Qualified in Kinzs County
Torm Enpires Morch 20, 187

UNITED STATES DESTRICT COURT SOUTHERN DISTRICT OF NEW YORK

NARCISA LOPEZ,

Plaintiff,

73 Civ. 4009

HENRY PHIPPS PLAZA SOUTH, INC.,

Defendant.

MEMORANDUM

GRIESA, J.

On October 4, 1973 I handed down a bench decision in this case holding that a preliminary injunction should issue. On October 9, 1973 I signed the injunction.

Plaintiff is a resident in a housing project owned and operated by defendent, a corporation organized pursuant to the Redevelopment Companies Law (Article V of the New York Private Housing Finance Law) and financed under Sections 221(d)(3) and 235 of the National Housing Act, 12 U.S.C. § 1701 et seq. Plaintiff resides in the development with her two sens and a daughter. At one time plaintiff's husband, Thomas, resided with the family, but plaintiff and her husband are now separated. The husband has moved away.

As my October 4, 1973 opinion describes in more detail, defendant he'd hearings on February 27, 1973,

March 6, 1973 and May 2, 1973 to determine whether plaintiff and her family should be evicted because of disorderly and dangerous conduct on the part of plaintiff's sons and husband in and around the development. The hearing examiner who heard the evidence rendered a decision on July 10, 1973 holding that plaintiff and her family should be evicted. Summary proceedings were commenced in the state court in September 1973. The original application for preliminary injunction was made by plaintiff by order to show cause dated September 19, 1973.

The case was originally assigned to Judge

Cannella. However, as Part I judge, I heard the motion

for preliminary injunction. Due to the fact that I had

become thus involved in the case, Judge Cannella assigned

it to me pursuant to Rule 14 of the Calendar Rules of

this District.

As my October 4 opinion indicates, I found that there was a violation of due process by defendant in that the action being taken to evict plaintiff was based in large part upon obsclete facts, and defendant had taken insufficient steps to obtain and consider

a strong probability that, at least as of the time of the preliminary injunction motion, the basis for hold-ing plaintiff and her family to be disruptive and dangerous had been wholly, or in large part, eliminated. Moreover. I held that there was no sound basis for evicting plaintiff and her children for conduct on the part of plaintiff's separated husband.

The injunction which I signed was to be in effect for 45 days, during which time defendant was to have the opportunity to hold another hearing and obtain current facts. The injunction was conditioned upon plaintiff's making up/ arrears in rentals.

The 45-day period has now expired. Plaintiff has moved to have the preliminary injunction extended. The motion is granted.

Defendant has taken the position that it will hold no further hearings, and in fact no further hearings have been held.

plaintiff's affidavits on the present application state that there have been no disturbing incidents involving the Lopez family since the time the original injunction was entered. These affidavits

further assert that the steps, which were promised in order to provide for supervision and discipline of the Lopez sons, have in fact been carried out.

Defendant has come forward with nothing whatever to indicate any untoward conduct on the part of the Lopez family in recent months. No facts in this regard are even referred to by defendant in opposition to the present application.

Under these circumstances, I hold that my injunction of October 1973 should be amended to remove the 45-day limit. The preliminary injunction should run to the final determination of this action.

All other terms of the injunction will remain in effect.

Settle order on notice.

Dated: New York, New York November 29, 1973

> THOMAS P. GRIESA U.S.D.J.

ORDER EXTENDING INJUNCTION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

NARCISA LOPEZ

Plaintiff

73 CIV. 4009

-against-

HENRY PHIPPS PLAZA SOUTH, INC.

ORDER

Defendant.

Plaintiff having moved for an order extending the preliminary injunction granted October 9, 1973, by Judge THOMAS P. GREISA enjoining defendant HENRY PHIPPS PLAZA SOUTH, INC., and its agents and all persons in active concert with it, from evicting or threatening to evict plaintiff from her apartment, Apt. 87, 330 East 26th Street, New York, New York, for 45 days, and this motion having been brought on by order to show cause signed on November 23, 1973, and the court wing considered all the papers submitted heroin, and having heard NANCY E. LeBLANC Esq., for the motion and JOSEPH DELMAN, Esq., in opposition thereto, on November 29, 1973, and the court having filed its memorandum containing findings of fact and conclusions of law, and it appearing to the court after due deliberation that otherwise plaintiff will suffer immediate and irreparable loss, injury, and damage, it is

ORDERED that the preliminary injunction granted by
Judge GREISA on October 9, 1973, for 45 days be and it is hereby
extended until the issues raised by the within action are finally
determined, and defendant HENRY PHIPPS PLAZA SOUTH, INC., its
agents and all persons in active concert with it, be and they
hereby are restrained and enjoined pending the final determination
of this action from taking any steps to evict plaintiff NARCISA
LOPES and her three children, THOMAS, Jr., POSE and NAIDA,

from their home in Apt. 8J, 330 East 26th Street, New York, New York, and it is

FURTHER ORDERED that the provisions of the order granted herein on October 9, 1973 shall remain in full force and effect, except insofar as said order limits the duration of the preliminary injunction to 45 days.

December 7, 1974 New York, New York

UNITED STATES DISTRICT JUDGE

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

MARCIBA LOPEZ,

Plaintiff,

CIVIL ACTION NO. 7351V. 4003

-against-

MOTICE OF APPEAL

HENRY PHIPPS PLAZA SOUTH, INC.,

Defendant.

Motice is hereby given that HENRY PHIPPS PLAZA SOUTH, INC., the defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the order of United States District Court Judge Thomas P. Greisa dated and entered December 7, 1973 continuing the preliminary injunction until the final jetermination of this action and from each and every part of the said order.

Dated: January 7 , 1974

WHITEHORN & DELMAN Attorneys for Defendant 355 Lexington Avenue Hew York, N. Y. 10017 Tel. No. (212) 661-1166

TO: CLERK, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

MFY LEGAL SERVICES, INC. 214 Fast 2nd Street New York, N. Y. 10009

U.S. COU	RT OF	APPEA	LS:SECONI	CIRCUIT
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Index No.

LOPEZ.

Plaintiff-Appellee,

against

Affidavit of Service by Mail

PHIPPS PLAZA SOUTH.

Defendant-Appellant.

STATE OF NEW YORK, COUNTY OF NEW YORK

SS.:

I, LAUREL N. HUGGINS,

being duly sworn.

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

1050 CARR OLL PL, ENX, N. V.

upon the 28th day of March 1974, deponent served the annexed Appellants That upon the 28th day of March

over upon Nancy E. Leblanc

attorney(s) for

Plaintiff-Appellee

in this action, at 214 East 2nd Street, New York, N.Y. 10009

the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York .

Sworn to before me, this 28th

day of March

Frint name beneath signature

LAUREL No. HUGGINS

- ROBERT T. BRIN

NOTAR KOWERS STABRINNEW YORK

ROBERT T. BRIN HOBERT T. NO. 31 -0115930K COUNTY NO. 31 - 0412050 COMMISS ON EXPIRES MARCH 30, 1975

